

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Government,

HONORABLE GEORGE CARAM STEEH

v.

No. 15-20652

D-3 EUGENE FISHER,
D-4 COREY BAILEY,
D-6 ROBERT BROWN,
D-13 ARLANDIS SHY,
D-19 KEITHON PORTER,

Defendants.

JURY TRIAL

Thursday, June 21, 2018

- - -

APPEARANCES:

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On behalf of Robert Brown

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On behalf of Arlandis Shy

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On behalf of Keithon Porter

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Detroit, Michigan

Thursday, June 21, 2018

At 8:48 a.m.

- - -

(Proceedings with jury at 8:48 a.m.)

THE COURT: You can take a seat. You are still under oath.

V I C E N E T R U I Z

DIRECT EXAMINATION CONT.

THE COURT: You may continue.

MR. FINOCCHIARO: Thank you.

BY MR. FINOCCHIARO:

Q. Special Agent Ruiz, I believe we left off yesterday afternoon talking about some rivals. I will show what's been marked as Government Exhibit 1AA for identification.

A. Okay.

Q. Can you explain to the jury who is in 1AA?

A. That's Michael Davis also known as 42 Twin. He is Martez Davis' brother.

Q. Is Mr. Michael Davis associated with any rival gang?

1 **A.** Hustle Boys.

2 **Q.** In your review of social media, have you seen his
3 photo depicted?

4 **A.** Yes, I have.

5 **Q.** If we could go to Exhibit 42, which is the
6 000Bigblood Facebook account, Page 37, and who do we see
7 in the photo?

8 **A.** We see a screen capture of Instagram account Twin
9 Mike, and that's a photo of Michael Davis there.

10 **MR. FINOCCHIARO:** Move for admission of
11 Government Exhibit 1AA your Honor.

12 **THE COURT:** All right. The Court will
13 receive the item.

14

15 **BY MS. FINOCCHIARO:**

16 **Q.** And publish 1AA, and again, who are we seeing in
17 this photo?

18 **A.** Michael Davis.

19 **Q.** And what nicknames does he go by?

20 **A.** 42 Twin or Twin.

21 **Q.** Now in your investigation, have you come across the
22 name Lominel Jackson?

23 **A.** Yes.

24 **Q.** Does Mr. Jackson associate with any group?

25 **A.** He associates with Six Mile.

1 Q. Did he go by my nickname?

2 A. Lomel or Six Mile Lomel.

3 Q. And have you seen him depicted in any social media?

4 A. Yes.

5 Q. Go to 000Bigblood, Exhibit 42, Page 21. Who do we
6 see?

7 A. That's a photo of Lominel Jackson.

8 Q. Just to remind the jury, who is the user of the
9 000Bigblood Facebook account?

10 A. Jeffrey Adams.

11 Q. Have you come across the name Devonte Roberts?

12 A. Yes, I have.

13 Q. Was Devonte Roberts associated with my groups?

14 A. He was RFE is the name of the group, which is a
15 subset of East Warren.

16 Q. Now you said he was. What do you mean he was?

17 A. Devonte Roberts was killed on May 8, 2015.

18 Q. Do you know how he was killed?

19 A. He was in a car with three other individuals,
20 including his brother Darrio Roberts, Jesse Ritchie who
21 was the driver, and Marquis Wicker was in the vehicle.
22 They were gunned down at the corner of Duchess and Craft.
23 Devonte Roberts was shot and killed that day. Darrio
24 sustained injuries do his head and ear area. Marquis
25 Wicker was shot multiple times in the arm, chest, neck

1 area. Jesse Richie did not suffer any gunshot wounds that
2 day.

3 Q. And do you see Mr. Roberts depicted in social media?

4 A. Yes, I do.

5 Q. Go again to the 000Bigblood Exhibit 42, Page 34.

6 Who do we see?

7 A. That's a photo of Devonte Roberts.

8 Q. Go to the 000Bigblood caption, what does it say?

9 A. He used the emojis in this post. It says, he
10 thought he was laughing. Got'em.

11 Q. We talked a lot of social media, Facebook and
12 Instagram. Could you explain to the jury how it is that
13 you get this information that we've seen over this last
14 day and a half?

15 A. Certainly. So in order to obtain these records,
16 this content, it requires a search warrant. The search
17 warrant is drafted and an affidavit is drafted, probable
18 cause. It's reviewed by the attorneys, and then beyond
19 that it's reviewed by U.S. Magistrate. The magistrate
20 reviews it. He or she determines if there is probable
21 cause. Then they will sign it, and we execute that search
22 warrant.

23 Q. So anyone cannot just go and get the information
24 we've seen here, is that right?

25 A. That's correct.

1 **MR. FINOCCHIARO:** One moment, your Honor.

2 No more questions, but I believe did not move the
3 picture of Robert Brown in, Exhibit 1D, yesterday, and I
4 move for its admission today.

5 **THE COURT:** All right. Any objections?

6 **MR. DALY:** No objections.

7 **MR. FEINBERG:** No objection.

8 **THE COURT:** Thanks. The Court will receive
9 the item.

10 **MR. FINOCCHIARO:** No further questions at
11 this time, your Honor.

12 **THE COURT:** Thank you. You can step down.

13 **MR. H. SCHARG:** I think there is some cross
14 examination.

15 **THE COURT:** You plan to cross?

16 **MR. H. SCHARG:** I know I do. I don't know if
17 anyone else does.

18 **THE COURT:** Okay.

19 **MR. H. SCHARG:** Before we even start, I have
20 been conferring with an individual at defense table who
21 has not been introduced, and that is Mr. Chris Anton who
22 is a discovery coordinator, and he will be working with
23 each of the defense counsel in this case. So if you don't
24 know who he is, he's not an attorney, not a defendant, but
25 our discovery coordinator.

1 **THE COURT:** All right. Thank you. Mr.
2 Scharg.

3 **CROSS EXAMINATION**

4
5 **BY MR. H. SCHARG:**

6
7 **Q.** Good morning.

8 **A.** Good morning.

9 **Q.** Could you put up Exhibit 1B. There we go. Agent
10 Ruiz, yesterday you identified Government Exhibit 1B of
11 that being Eugene Fisher, is that correct?

12 **A.** That's correct.

13 **Q.** And you also referred to him with the nickname of
14 Fes and Fester, correct?

15 **A.** Correct.

16 **Q.** As in Uncle Fester. Did you ever see the Addams
17 Family?

18 **A.** Yes, I have.

19 **Q.** Ever see the character Uncle Fester?

20 **A.** Yes, I have.

21 **Q.** Would you agree with me that he looks like the black
22 version of Uncle Fester?

23 **A.** Certainly.

24 **Q.** Okay. Do you know that he had that name from the
25 time he was in elementary school?

1 A. I don't know that.

2 Q. Through your investigation?

3 A. I don't know when he acquired that name.

4 Q. Okay. In terms of other individuals that were
5 identified that were on this poster board, after they were
6 identified, you also -- there was a group of pictures
7 regarding tattoos?

8 A. Yes, there was.

9 Q. Gang related tattoos?

10 A. Certainly.

11 Q. Some that were not gang related?

12 A. I would agree with that.

13 Q. Would you also agree with me that Eugene Fisher,
14 Uncle Fester, doesn't have one tattoo on his body?

15 A. I haven't examined his body.

16 Q. I know there are certain areas that you didn't
17 examine, but you're not aware of any tattoos on his body?

18 A. I would agree with you.

19 Q. Would you agree with me if there were gang tattoos,
20 you believe that's relevant that you would have documented
21 and photographed that?

22 A. Certainly.

23 Q. Do you have any pictures in your files of Mr. Fisher
24 with my tattoos?

25 A. I would have to review the photos to be certain.

1 Q. None that you know of?

2 A. None that I know of.

3 Q. Okay. You were able to identify Exhibit Government
4 Exhibit 44, which is approximately 77 pages of Facebook
5 materials that were received pursuant to a search warrant
6 for the Facebook business account of Eugene Fisher?

7 A. I will take your word that it is Exhibit 44.

8 MR. H. SCHARG: Can I approach?

9 THE COURT: Yes.

10 THE WITNESS: Yes, this is Exhibit 44, and
11 this is the Facebook account for Eugene Fisher.
12

13 BY MR. H. SCHARG:

14 Q. When you say it is the Facebook account, there are
15 77 pages here, correct?

16 A. I would have to count them to be certain.

17 Q. It looks like approximately 77 pages?

18 A. Sure.

19 Q. Are you aware of the fact that the Facebook business
20 account that was subpoenaed regarding Mr. Fisher's
21 Facebook account had over 4,000 pages?

22 A. I believe that some of these returns are very large.

23 Q. Is it fair that the government cherry picked or
24 selected certain pages of that 4,000 pages that would be
25 consistent with the government's theory of this case?

1 **A.** If there are 77 pages in that exhibit, then
2 certainly only certain pages were selected from that
3 4,000.

4 **Q.** So approximately 77 pages out of over 4,000 were
5 placed in this exhibit to promote the government's theory,
6 correct?

7 **A.** Those would be the relevant pages for this
8 investigation.

9 **Q.** So anything that was -- would have been favorable to
10 Mr. Fisher would not have been relevant?

11 **A.** Well, it still would have been released to defense
12 in discovery.

13 **Q.** Can we turn to -- do you know the difference between
14 posting and sharing on Facebook?

15 **A.** Yes.

16 **Q.** Posting is where you actually post a photo or
17 picture or some information data, is that correct?

18 **A.** Correct.

19 **Q.** And sharing is taking someone else's posting and
20 sharing, and putting that on your page, is that correct?

21 **A.** That's fair, yes.

22 **Q.** You see the President of the United States doing
23 that everyday, doesn't he?

24 **A.** Very frequently.

25 **Q.** Would you agree with me as to Exhibit 44, that out

1 of that -- you'll have to trust me that there are 77
2 pages -- that a number of the pages that we referred to
3 and you've identified, were not postings of Mr. Fisher,
4 but they were posting by other individuals that Mr. Fisher
5 shared?

6 A. That could be the case.

7 Q. Turn to 5. This is one of the pages of Exhibit 44.
8 You see that?

9 A. I do.

10 Q. Do you know if it was posted or shared?

11 A. I would have to look at the data for this to be
12 certain.

13 Q. You don't know?

14 A. I don't know.

15 Q. Do you know if that photo was posted or shared?

16 A. Not by looking at the photo.

17 THE COURT: Do you have page numbers?

18 MR. H. SCHARG: Do I have page numbers?

19 THE COURT: Right.

20 MR. H. SCHARG: The first one was Page 5.
21 The second one was Page 7.

22
23 BY MR. H. SCHARG:

24 Q. Page 14, do you know if that posted or shared?

25 A. It says posted.

1 Q. Page 16, do you know if that was posted or shared?

2 A. There is no data with that photo.

3 Q. Page 18?

4 A. It says posted.

5 Q. Posted for shared by Mr. Fisher?

6 A. It says posted.

7 Q. Would you agree with me that of the photographs that
8 you have identified throughout your testimony yesterday,
9 that some of the pictures were posted and some were
10 shared?

11 A. Certainly. To be clear, you know, someone can
12 receive a photo and post it, whether they received it
13 through a text or private message. They can actually post
14 that even though it was not an image that they created.

15 Q. But sometimes a picture photo or some words or data
16 are posted by someone else, and the person who receives
17 it, the recipient, can also share that with others?

18 A. Correct.

19 Q. That a person does not necessarily post something
20 that's on their Facebook account, but it is something that
21 they have received as a recipient, and go ahead and post
22 it -- repost it, which is called sharing, is that correct?

23 A. You kind of stated they are reposting it.

24 Q. Okay. But the terminology is sharing?

25 A. Okay.

1 Q. Yes?

2 A. Yes.

3 MR. H. SCHARG: No further questions.

4 THE COURT: Thank you, Mr. Scharg.

5 MR. FEINBERG: I have some questions.

6

7 CROSS EXAMINATION

8

9 BY MR. FEINBERG:

10

11 Q. Special Agent Ruiz, in your investigation, how many
12 years have you projected Mr. Brown being associated with
13 the Seven Mile Bloods?

14 A. I learned of Mr. Brown's association with the Seven
15 Mile Bloods very early on in the investigation. The
16 investigation started in June of 2015. I couldn't tell
17 you exactly the date that I discovered that he was linked
18 to this organization.

19 Q. Okay. In your investigation, how many pages of Mr.
20 Brown's Facebook was received in total?

21 A. That's an excellent question. Without his Facebook
22 in front of me, I could not give you an exact number.

23 Q. Would you agree that it was approximately 7,000
24 pages?

25 A. That sounds fair.

1 Q. And again, the pages that you chose to be part of
2 the exhibit were targeted by you to further your
3 investigation?

4 A. The entire Facebook account was investigated by me
5 to further the investigation.

6 Q. But the pages that you chose to be in the exhibit
7 were ones that you chose to use as an exhibit in the
8 prosecution?

9 A. It was probably a combination of myself, U.S.
10 Attorneys and trial attorneys.

11 Q. How many pages were part of the exhibit?

12 A. I would have to review the exhibit to be certain.

13 Q. Is that in court?

14 A. Yes.

15 Q. Would you like to take a look at it?

16 A. Sure.

17 Q. I show you Exhibit 46, is that correct?

18 A. That's correct.

19 Q. And approximately how many pages?

20 A. The last page of this exhibit is number 119.

21 Q. And how many of those are posted, shared or
22 comments?

23 A. I would have to review this entire 119 pages.

24 Q. Would you agree that there's a lot of comments and
25 shared throughout the exhibit?

1 **A.** There certainly could be. One thing that is
2 important to note too since we are talking about the
3 volume of pages received from Facebook, there's a lot of
4 extra data contained in the returns. Oftentimes what you
5 will see, you get duplicates of the same images, sometimes
6 triple. That adds to that number of pages in the return.
7 In addition to what one would see when they are reviewing
8 a Facebook account, to include the photo or video or
9 comments or whatever.

10 **Q.** Over and over?

11 **A.** Correct. You get information such as, was it posted
12 by mobile device, you know, the date and time it was added
13 to the user account.

14 **Q.** Okay. That's beyond what I asked.

15 **A.** Okay.

16 **Q.** Also, in investigating Mr. Brown, did you find any
17 gang related tattoos on Mr. Brown?

18 **A.** I don't recall.

19 **Q.** If he had any, it would have been noted?

20 **A.** Absolutely.

21 **Q.** And it's not noted anywhere that Mr. Brown during
22 the so-called early on relationship with SMB, according to
23 your investigation, had any gang related tattoos anywhere
24 on his body?

25 **A.** I don't recall seeing anything of gang related

1 tattoos.

2 MR. FEINBERG: No further questions.

3 THE COURT: Thank you, Mr. Feinberg.

4 Any other questions?

5 MR. MAGIDSON: Yes, your Honor. Just a
6 couple.

7 THE COURT: Okay. Mr. Magidson?

8 MR. MAGIDSON: Thank you, your Honor.

9

10 CROSS EXAMINATION

11

12 BY MR. MAGIDSON:

13

14 Q. Good morning, Agent Ruiz.

15 A. Good morning.

16 Q. I represent Mr. Shy. I would just like to ask you a
17 couple of questions along the same lines as the others in
18 terms of Mr. Shy's Facebook account.

19 Once again, you would agree with me that it was
20 in excess of 6,000 pages?

21 A. I will agree with that.

22 Q. In his case, you selected 75 to 100 pages of photos
23 that you believed were relevant to your case, is that
24 correct?

25 A. There certainly could be more that would be

1 relevant, but we probably chose a lesser amount.

2 Q. You didn't pick out photos that would be favorable
3 to him, correct?

4 A. You can do that when you present your defense
5 exhibits.

6 MR. H. SCHARG: I didn't hear that.

7

8 BY MR. MAGIDSON:

9 Q. Would you repeat that?

10 A. Any other photos that were in, you certainly can
11 present that as defense exhibits.

12 Q. So you didn't include, for instance, pictures with
13 his mother, grandmother? That was not part of the --

14 A. No.

15 Q. Playing with the dog or things like that?

16 A. No.

17 Q. You would agree with me there are no photos of Mr.
18 Shy with guns, pointing guns, putting guns against his
19 head or other peoples' heads?

20 A. Without looking at all the photos, I would not agree
21 with that.

22 Q. The ones that we've seen thus far, there was none
23 demonstrated here, would you agree with that?

24 A. That may be correct.

25 Q. You have been working on this case for how many

1 years?

2 A. Approximately three.

3 Q. Okay. And you're familiar with Mr. Shy?

4 A. Yes.

5 Q. You're familiar whether there's -- whether he's had
6 a Facebook account and so forth?

7 A. Yes.

8 Q. And certainly you would be familiar with whether he
9 had a photo that -- where he was pointing a gun at one or
10 more people or himself, right?

11 A. I have seen a lot of photos of many individuals.

12 Q. So you're a little confused?

13 A. I wouldn't say confused, but to be certain, which is
14 what I think we are here to do, I would have to review the
15 photos.

16 Q. So the purpose of -- for instance, some of these
17 photos, particularly tattoos, is to show that your idea --
18 that the government's idea of that is to shows that he is
19 a member of a club or gang or organization? Is that what
20 you're saying?

21 A. Not a club. A gang.

22 Q. Okay. A group of people?

23 A. Sure.

24 Q. And would you agree with me that just being a member
25 of a group or gang, that's not illegal, is it?

1 **A.** No. What's illegal is criminal activity that they
2 do.

3 **Q.** So if I'm a member, I could be a member of the Seven
4 Mile Bloods, but -- I'm a member. That doesn't make it an
5 illegal act, does it?

6 **MR. FINOCCHIARO:** Objection, your Honor.
7 He's asking the witness to make a legal determination.

8 **MR. MAGIDSON:** He's the agent, your Honor.

9 **THE COURT:** I will permit the question.
10 Overrule the objection.

11 **A.** I want you to repeat the question.

12

13 **BY MR. MAGIDSON:**

14 **Q.** If I am member, if I have a tattoo with SMB on it,
15 I'm now a member of a -- am I committing a crime?

16 **A.** Well, I guess that's up to the law to determine, but
17 if you become a member --

18 **Q.** Yes or no, Agent Ruiz? Yes or no?

19 **A.** I don't think that you can answer it yes or no.

20 **Q.** If you can't answer it yes or no, I don't want you
21 to add hypotheticals.

22 **A.** It is not a hypothetical.

23 **Q.** My question is, if I have a tattoo on my arm, am I
24 committing a crime?

25 **A.** Getting a tattoo, no.

1 Q. But if I have a tattoo that says Seven Mile Bloods
2 with blood dripping off my arm, is that a crime?

3 A. Being a member of a gang that's engaged in
4 criminal activities --

5 Q. I didn't say engaged in criminal activities. I have
6 a tattoo on my arm. It's bloody. It's has horrific
7 pictures on it. Is that a crime?

8 A. Getting a tattoo is not a crime.

9 Q. Now you referred to some reference to Hard Work
10 Entertainment. You heard that term?

11 A. Yes.

12 Q. Would you agree that's a record label?

13 A. Yes.

14 Q. Would you agree that Mr. Shy is a rapper and is
15 engaged and has made rap videos, and things of that
16 nature?

17 A. Yes, he has.

18 Q. And that he goes to a studio, and it's done by
19 production. It's just not somebody holding a cell phone
20 up and taking pictures. It is done by a studio, is that
21 correct?

22 A. That would be my assumption.

23 **MR. MAGIDSON:** Thank you, your Honor.

24 **MR. SPIELFOGEL:** Two questions, your Honor.

25 **THE COURT:** Okay.

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CROSS EXAMINATION

BY MR. SPIELFOGEL:

Q. Good morning, agent.

A. Good morning.

Q. How are you today?

A. I'm well.

Q. Good. How many pages of Facebook from looking into the Facebook account, how many pages did you find of Corey Bailey? How many pages were on his Facebook account?

A. I don't know.

Q. Well, you do know that he doesn't have a Facebook account, is that correct -- Strike that.

You're the one who subpoenaed all of these, isn't that correct?

A. These were search warrants.

Q. Okay. You're the one that got the search warrants, correct?

A. Correct.

Q. Did you get a Facebook account for Corey Bailey?

A. There were some accounts that we were not able to get.

THE COURT: I missed that.

THE WITNESS: Were not able to get.

1 BY MR. SPIELFOGEL:

2 Q. I take that as no?

3 A. Sure is.

4 MR. SPIELFOGEL: Nothing else.

5 THE COURT: Anyone else?

6 MR. S. SCHARG: On behalf of Mr. Porter, no
7 questions.

8 MR. FEINBERG: May I ask another question?
9 I'm sorry that I omitted it.

10 THE COURT: Go ahead.

11
12 CROSS EXAMINATION CONT.

13
14 BY MR. FEINBERG:

15
16 Q. In reviewing the Facebook material from Mr. Brown,
17 did you look at all the pages?

18 A. I will say most of the pages.

19 Q. Did you find any pages depicting Mr. Brown running a
20 day care or after school center on a daily basis?

21 A. I don't recall.

22 Q. Do you recall Mr. Brown with children in a play kind
23 of area?

24 A. I do recall seeing photos of Mr. Brown with what I
25 believe is his child.

1 Q. One child. What about many children?

2 A. To be certain I would have to review the account.

3 Q. Again?

4 A. Again, yes.

5 Q. Okay. But in your memory, are you saying that you
6 never found anything positive for Mr. Brown running a day
7 care or after school care?

8 A. I was not looking for Mr. Brown to be running a day
9 care when reviewing his Facebook.

10 Q. You were not looking at Mr. Brown's Facebook account
11 for anything that was a very positive picture of Mr.
12 Brown, is that correct?

13 A. I was investigating a gang involved in violent
14 crimes. I was looking for evidence of that activity.

15 Q. Did you investigate the Cleo McDougal homicide?

16 A. I did.

17 Q. In your investigation, did you talk to or find out
18 that Mr. McDougal's brother was a witness to the homicide?

19 MR. FINOCCHIARO: Objection, your Honor.
20 This is beyond the scope of his direct examination.

21 MR. SPIELFOGEL: Your Honor, I'm assuming
22 that the agent will be called again, and we can go into
23 those matters.

24 THE COURT: Yes, that makes sense.

25 MR. SPIELFOGEL: Does make sense?

1 **MR. FINOCCHIARO:** Yes.

2 **MR. FEINBERG:** Then I will wait for that,
3 your Honor.

4 But answer one question, did you find out that Mr.
5 McDougal's brother identified Elroy Lucky Jones --

6 **MR. FINOCCHIARO:** Objection, your Honor.

7 **MR. FEINBERG:** -- as the killer of Cleo
8 McDougal?

9 **THE COURT:** Is there an objection?

10 **MR. FINOCCHIARO:** Yes, same objection. It is
11 outside the scope of direct examination.

12 **MR. FEINBERG:** He's up there. He is free to
13 answer whatever questions I am asking.

14 **THE COURT:** Well, we do anticipate that he
15 will be called multiple times. I'll permit the answer if
16 you have it at hand.

17 **A.** I know the answer.

18

19 **BY MR. FEINBERG:**

20 **Q.** In your investigation, did you find out that Cleo
21 McDougal's brother identified Elroy Lucky Johns who he has
22 known for a lengthy period of time as the killer of his
23 brother Cleo McDougal?

24 **A.** There were flaws in that investigation.

25 **Q.** I understand that. Did you find out whether or not

1 Mr. McDougal's brother identified Elroy Lucky Jones as the
2 killer of his brother?

3 A. Yes.

4 MR. FEINBERG: Thank you.

5 THE COURT: Anything further redirect?

6 MR. FINOCCHIARO: Yes, your Honor.

7 THE COURT: Okay.

8
9 REDIRECT EXAMINATION

10
11 BY MS. FINOCCHIARO:

12
13 Q. Are you aware of what happened with the conviction
14 of Mr. Elroy Jones?

15 A. It was vacated.

16 Q. When you say "vacated", what do you mean by that?

17 A. They overturned his conviction.

18 Q. And there was a lot of questions about social media
19 in this investigation. Approximately how many social
20 media accounts did you review as part of your
21 investigation?

22 A. It would be just a guess. I would say over 50, and
23 many of those contained thousands of pages with many
24 images with many different individuals.

25 MR. FINOCCHIARO: Nothing further, your

1 Honor.

2 **THE COURT:** All right. Thank you. Thank
3 you, sir. You can step down.

4 **THE WITNESS:** Thank you.

5
6 (Witness excused.)

7
8 **MR. S. SCHARG:** Your Honor, may I make one
9 request, please? If Agent Ruiz is going to be testifying
10 at another time, can we ask that he be sequestered until
11 that time period?

12 **MR. FINOCCHIARO:** Your Honor, I believe it's
13 been addressed, the fact that he is going to be recalled,
14 and he is the case agent. So he does have the ability to
15 sit here during the trial to assist the trial team.

16 **THE COURT:** He will be permitted to stay.

17 **MR. FINOCCHIARO:** The government would call
18 Andrew White.

19 **THE COURT:** Okay.

20
21 **A N D R E W W H I T E**

22
23 being first duly sworn by the Court to tell the truth, was
24 examined and testified upon his oath as follows:

25
15-20652; USA v. EUGENE FISHER, ET AL

1 **THE COURT:** You can take a seat. We'll start
2 by having you state your name, and spelling your last
3 name.

4 **THE WITNESS:** Andrew White, W-h-i-t-e.

5 **THE COURT:** Thank you. You may proceed, Mr.
6 Wigod.

7 **MR. WIGOD:** Thank you, your Honor.

8

9 **DIRECT EXAMINATION**

10

11 **BY MR. WIGOD:**

12

13 **Q.** Tell the jury what you do for a living.

14 **A.** I'm a state investigator for the state of Arizona.

15 **Q.** How long you been an investigator for the state of
16 Arizona?

17 **A.** Eight years.

18 **Q.** How many?

19 **A.** Eight.

20 **Q.** What is it that you do as an investigator for
21 Arizona?

22 **A.** I do investigation on massage therapists that commit
23 crimes, and I take them before the board and have
24 administrative hearings for their licenses.

25 **Q.** Before you were an investigator with the state of

1 Arizona, where did you work?

2 A. One year with the Wayne County Prosecutor's Office,
3 and before that 28 years total with the Detroit Police
4 Department, and 26 in narcotics.

5 Q. You worked for the DPD for 28 years?

6 A. Yes.

7 Q. Twenty-six of them were narcotics?

8 A. Yes.

9 Q. So you know a little something about drug
10 trafficking in city of Detroit?

11 A. Yes.

12 Q. Now as an investigator with narcotics for 26 years,
13 can you just explain to the jury what type of cases you
14 handled, what your duties were?

15 A. We conducted surveillance and arrest operations, buy
16 and bust operations, search warrants, street enforcement
17 operation, running source information, receive complaints
18 and investigate those complaints from bottom to top,
19 receiving complaints from community meetings, mayor's
20 office, court system.

21 Q. I just want to follow up on some of those things
22 that you listed, and have you explain to the jury what
23 that involves.

24 A. Yes.

25 Q. I think one of the first things that you said was

1 surveillance.

2 A. Yes.

3 Q. What do you mean by surveillance?

4 A. Surveillance is an operation where we have a
5 complaint. We assigned an individual to do the
6 surveillance. We monitor the location to see if it is
7 active. Once we find out it is active, we act. We
8 conduct street enforcement or search warrant, or we might
9 try a buy and bust operation.

10 Q. So surveillance, you get a complaint that there are
11 drugs at x-y-z address. You go out there kind of not so
12 you're obviously the police, right?

13 A. Yes.

14 Q. And take a look to see if there is any said
15 activity, drug activity?

16 A. Correct.

17 Q. Now in explaining the surveillance, you indicated
18 and before you indicated, buy and bust?

19 A. Yes.

20 Q. Explain to the jury what you mean by that.

21 A. Buy and bust, we would issue an officer recorded
22 money, and he goes and attempts to make a purchase of
23 suspected narcotics, depending what it is, cocaine,
24 marijuana or pills or heroin.

25 Q. So that would be an officer doing that?

1 A. Yes.

2 Q. Undercover officer?

3 A. Yes.

4 Q. So someone not dressed as a police officer and is in
5 plain clothes?

6 A. Right. I have bought drugs in uniform before but --

7 Q. I imagine so. Now you also mentioned source
8 information?

9 A. Yes.

10 Q. Are there times instead of an undercover police
11 officer going to purchase drugs from a particular person
12 or location, you use a cooperating informant?

13 A. Yes.

14 Q. Explain that process.

15 A. There are two ways. One could be just giving you
16 information, telling you about a certain location and we
17 act on it. The other one is use the source of information
18 as a person who is supplied with money to make a purchase
19 at that location, and then we will make a -- get a search
20 warrant for that location and act on it.

21 Q. For example, you have a source, a source meaning a
22 civilian --

23 A. Yes.

24 Q. -- not a police officer, will go under the direction
25 of law enforcement to a particular person or address to

1 purchase controlled substances, and then return to law
2 enforcement?

3 A. Yes.

4 Q. And based on that information, you would obtain a
5 search warrant from a court to search that location?

6 A. That's correct.

7 Q. I think you also mentioned that you follow up on
8 complaints?

9 A. Yes.

10 Q. Issues from either the citizens complaining or the
11 mayor's office?

12 A. Yes. We receive a list from the hot line. We
13 receive complaints from the community meetings when people
14 write the location down on a piece of paper or something
15 like that, and we investigate it. Sometimes we receive
16 complaints from other police officers that a location is
17 active, and we follow up and do an investigation from
18 there.

19 Q. Are those reports from the citizens anonymous?

20 A. Most are. Most are.

21 Q. Now during your 26 years, what was your -- were you
22 a supervisor or --

23 A. Yes, I started as a PO. I did --

24 Q. PO?

25 A. Police officer. I did buys and raids and ran

1 sources and conducted a lot of street enforcement
2 activity. I was promoted in 96, and I was supervisor
3 until 2010.

4 Q. When you say street enforcement activity, you're
5 talking about the things that we just went over?

6 A. Yes.

7 Q. Now during your years in narcotics, did you come
8 across times where individuals selling narcotics would use
9 vacant dwellings?

10 A. Yes.

11 Q. What's the advantage of that?

12 A. Ownership, kind of tied that individual to that
13 location. You can actually put drugs and hide drugs in
14 the place because you can destroy the house, and place
15 stuff inside the house where probably only you know where
16 it's at. It is the ability to make escape routes from
17 that location. So our job is to circumvent the house, and
18 then make entry to keep everyone inside the house.

19 Q. Okay. So I think the first reason you said is that
20 house is not tied to the drug dealers?

21 A. Correct.

22 Q. Since it's -- typically vacant houses are not kept
23 up extremely well?

24 A. No.

25 Q. There's holes in the floor, behind walls, things of

1 that nature where controlled substances can be hidden?

2 A. Yes.

3 Q. Is it also fair to say there's not a lot foot
4 traffic in vacant houses?

5 MR. MAGIDSON: Leading questions, your Honor.

6 THE COURT: Okay. You want to try to avoid
7 leading questions.

8 MR. WIGOD: Of course, your Honor.

9 In your experience, a lot of foot traffic, meaning
10 a lot regular citizens going to vacant dwellings?

11 A. I would not say regular citizens. They might have a
12 route that they use might. They might use the alley,
13 might use the side of the house.

14
15 BY MR. WIGOD:

16 Q. You're talking about drug dealers?

17 A. Yes.

18 Q. During your time in narcotics, did you come across
19 individuals who would hide drugs? You mentioned in
20 residences or vacant dwellings, but would you come across
21 individuals who would hide drugs on their person?

22 A. Yes, in their socks, groin area, in the anus, taped
23 to the chest, arms, hats, up the sleeve, gloves.

24 Q. You've actually experienced cases where you had
25 individuals hiding controlled substance in their body

1 cavity?

2 A. Oh, yes.

3 Q. What about individuals who -- did you find any
4 individuals who had large amount of cash on them?

5 A. Oh, yes. Yes.

6 Q. Was that common?

7 A. Yes. A lot of times it is spread out, but you see
8 one individual who might control more money than others.

9 Q. What about firearms? Was it common for you to find
10 not only controlled substance, but firearms with the
11 controlled substances?

12 A. On the individuals and stashed in locations also.

13 Q. And the idea behind having a firearm with controlled
14 substances would be what?

15 A. To protect their interest, which would be drugs and
16 money.

17 Q. So you're aware of cases where individual drug
18 dealers would get robbed?

19 A. Oh, yes.

20 Q. Those individuals don't typically call the police.
21 The drug dealers don't call the police when they are
22 robbed?

23 A. No. I've seen it happened, but very rare.

24 Q. Less rare than buying drugs in a uniform. Just
25 kidding.

1 So those individuals who get robbed of their
2 drugs, obviously they are left to themselves to protect
3 themselves?

4 A. Yes.

5 Q. Thus the firearms?

6 A. That's right.

7 Q. So individuals sometimes have firearms on themselves
8 you mentioned?

9 A. Yes.

10 Q. You also mentioned firearms in the dwellings or the
11 locations where --

12 A. A lot of times they are systematically placed so
13 they can get to that weapon very fast.

14 Q. You heard vacant dwellings. Is there another name
15 for vacant dwellings that deal drugs out of?

16 A. Lots of time just a hole.

17 Q. Now obviously you're not able to patrol the entire
18 city at the same time as far as drug dealing. How is it
19 that you determine what areas to focus on?

20 A. Each area has a sergeant and a crew assigned to it.
21 I was assigned to the Ninth Precinct for five years, and
22 then I was assigned to street enforcement from 1986 to
23 1996, and again from 2004 to 2005, and then central
24 enforcement from 2005 to 2010.

25 Q. Does the Ninth Precinct cover the area of Seven Mile

1 and Gratiot?

2 A. Yes.

3 Q. And you're familiar with that area?

4 A. Yes.

5 Q. Basically because you worked narcotics in that area?

6 A. Yes, and I lived in that area also.

7 Q. Now when you were in narcotics in the Ninth Precinct
8 Seven Mile and Gratiot area, you conducted street
9 enforcement that you listed out?

10 A. Yes.

11 Q. I want to talk to you about two particular incidents
12 that you were involved in, one being December 10, 2008.
13 Do you recall that incident?

14 A. Yes.

15 MR. FEINBERG: What year?

16 MR. WIGOD: December 12, 2008.

17
18 BY MR. WIGOD:

19 Q. Did you have an opportunity to have contact with
20 several individuals who were suspected of participating in
21 narcotics activity?

22 A. Yes.

23 Q. Can you please simply just -- some were found in
24 possession of controlled substance, and some were in and
25 around that activity?

1 A. Yes.

2 Q. As far as the individuals -- all the subjects that
3 were found, do you remember -- this is the 2008 incident.
4 What location was that at?

5 A. That was at 14110 Eastburn.

6 Q. And there were several subjects that you and your
7 narcotic team were in contact with?

8 A. Yes.

9 Q. Just list for us the subjects that were involved in
10 that incident.

11 A. Donald Gantt, Davon Fitzpatrick and Javonte Smith.

12 Q. And were there other individuals as well?

13 A. Yes.

14 Q. Who were those individuals?

15 A. May I refer to my PCR?

16 Q. Please.

17 A. That would be Robert Brown, Tynisha Mumford, Jeffrey
18 Adams, Cheyarian Burse, Steve Arthur. That's it.

19 Q. Now you mentioned an individual by the name of
20 Robert Brown. Do you have a date of birth for that
21 individual?

22 A. Yes 4-7-1982.

23 Q. And you mentioned Jeffrey Adams and Steven Arthur
24 were there as well?

25 A. Yes.

1 Q. Now -- go ahead.

2 A. Jeffrey Adams' birthday was 3-13-89, and Mr. Arthur
3 was 4-16-89.

4 Q. Now what type of operation was this?

5 A. We were doing a surveillance and arrest operation.

6 Q. Meaning what?

7 A. I set up a surveillance point a short distance away,
8 monitor the individuals conducting narcotics transaction
9 at the side of the location. I notified my arrest team to
10 move and to do an investigation. There were individuals
11 who were arrested with narcotics, and Mr. Smith was in
12 possession of a weapon.

13 Q. There were narcotics found on which individuals?

14 A. Mr. Gantt, Mr. Fitzpatrick and Mr. Smith.

15 Q. What types of narcotics?

16 A. Marijuana.

17 Q. And you mentioned there was a firearm?

18 A. Yes. It was a blue steel auto Colt .38 confiscated
19 from Mr. Smith.

20 Q. There were the other four individuals -- excuse
21 me -- five individuals also were also present with those
22 three individuals?

23 A. Yes, they were issued ordinance violations for drug
24 activity.

25 Q. Okay. Just real quick, I may have missed this, you

1 mentioned that you were doing surveillance at this time,
2 and what was it, and you ordered -- or you directed the
3 officers to go in. What was it that made you direct the
4 officers to go in?

5 A. I saw those three individuals greeting the suspected
6 buyers, accepting money, and giving the individuals what I
7 believe was a cupped hand position. That's the normal way
8 of passing narcotics in the open. Those individuals would
9 then walk away from that location and leave the area. I
10 gave the description of those three individuals involved
11 to my arrest team. They moved in and made the arrest.

12 Q. You saw actually what you believed was a drug deal?

13 A. Oh, yes. Yes.

14 Q. Mr. White, I want to go to an incident from
15 September 9, 2003.

16 A. Yes, sir.

17 Q. This was at Manning and Monarch?

18 A. Yes.

19 Q. Are you familiar with that location?

20 A. Yes.

21 Q. Also in the Ninth Precinct?

22 A. Yes.

23 Q. Near Seven Mile and Gratiot?

24 A. Yes.

25 Q. And this was a another street enforcement?

1 **A.** Yes.

2 **Q.** And did you come in contact with multiple
3 individuals on that location?

4 **A.** Yes, we did.

5 **Q.** Could you just list the names of the individuals who
6 you had contact with?

7 **A.** Yes, referring to the paperwork, Devon Patterson
8 4-16-85, Pernell Williams, 7-13-84, Edward Maddox,
9 4-12-82, Derrick Bush, 10-27-64, Robert Brown, 4-7-82,
10 James Jackson, 6-21-44, Anthony Lovejoy, 9-26-82, Deantre
11 Scalfe, 5-16-82, Lekeyshia Harris, 5-12-84, Tequila
12 Coleman, 10-11-81, Roderick Daniels, 9-16-81.

13 **Q.** Now on some of those individuals controlled
14 substance were found?

15 **A.** Yes. Cocaine was confiscated from Mr. Devon
16 Patterson. From Mr. Williams and Mr. Maddox marijuana was
17 confiscated.

18 **Q.** How about any U.S. currency? Was there any U.S.
19 currency on any of the individuals?

20 **A.** \$230 from Mr. Patterson, and I believe \$57 from
21 Mr. Williams, and then \$160 from Mr. Maddox.

22 **MR. WIGOD:** One quick second.

23 Thank you for your time. These gentlemen may have
24 some questions for you.

25 **THE COURT:** Any cross examination?

1 **MR. H. SCHARG:** No questions on behalf
2 of Mr. Fisher.

3 **MR. FEINBERG:** Yes, sir. Just one second.

4 **MR. S. SCHARG:** No questions on behalf of Mr.
5 Porter.

6 **THE COURT:** Thank you, Mr. Scharg.

7
8 **CROSS EXAMINATION**

9
10 **BY MR. FEINBERG:**

11
12 **Q.** May I see the documents that you were referring to?

13 **A.** Yes, sir.

14 **Q.** Let's go to the September 9, 2003 incident.

15 **A.** Yes.

16 **Q.** You mentioned a bunch of names. You also mentioned
17 Robert Brown?

18 **A.** Yes.

19 **Q.** Where was he located?

20 **A.** Actually, I don't remember any contact with him
21 personally. So I couldn't tell you. I was the officer in
22 charge, and I didn't make any arrests. I did confiscation
23 of money at that location.

24 **Q.** Are you saying he was in a particular dwelling?

25 **A.** At that time they were at the --

1 Q. Not they. Mr. Brown.

2 A. It would be at the Manning location.

3 Q. Inside a house?

4 A. No, no.

5 Q. Where was he?

6 A. If I remember correctly, they were on the street.

7 Q. Specifically, Mr. Brown, where was he?

8 A. I didn't have any contact with Mr. Brown personally.

9 Q. Do you know if his family lived in that area?

10 A. I couldn't tell you. I'm sorry.

11 Q. He wasn't arrested, was he?

12 A. Technically he was arrested and we did a warrant
13 check and issued violations. Some had violations. Some
14 were taken to the precinct.

15 Q. Was he charged with anything?

16 A. If I can refer to the report?

17 Q. Sure. Sure.

18 A. He was issued a misdemeanor ordinance violation.

19 Q. For what?

20 A. Probably loitering.

21 Q. Not probably.

22 A. I can't tell from this.

23 Q. Do you know what happened to the case?

24 A. No, I don't.

25 Q. You don't know. You can't verify the fact that the

1 case was dismissed for lack of evidence?

2 A. Lack of evidence?

3 Q. Yes, lack of evidence that he was in violation of
4 any law?

5 A. If the case was probably dismissed, we probably not
6 in the courtroom, but that's probably what happened. Lot
7 of times we in multiple courtrooms. I made over 58,000
8 narcotics arrests.

9 Q. You don't know if the case was dismissed because of
10 lack of evidence?

11 A. I couldn't tell you that.

12 Q. Okay. He wasn't found with any drugs or money?

13 A. No.

14 Q. Okay. Let's go to the December 10, 2008. You
15 mentioned that a number of people were found with drugs?

16 A. Yes.

17 Q. Correct?

18 A. Yes.

19 Q. Mr. Gantt, Mr. Fitzpatrick and Mr. Smith?

20 A. Yes.

21 Q. And some were found with money?

22 A. Yes.

23 Q. Where was Mr. Brown in relation to the
24 investigation?

25 A. In the dwelling.

1 Q. In the house?

2 A. Yes.

3 Q. Did anyone see him drive up to the house?

4 A. No, not while I was there.

5 Q. I'm sorry?

6 A. I was the surveillance officer, no.

7 Q. Where in the house was he?

8 A. I don't know exactly his location. I was not the
9 arresting officer, but I was the officer on surveillance,
10 and the only people that left the house were the people
11 that made the purchase of narcotics. No one else left the
12 house.

13 Q. Mr. Brown never left the house?

14 A. No.

15 Q. So you're saying the sellers were in the house, and
16 then they left and were found with money and drugs?

17 A. No. The sellers were the three individuals at the
18 side of 14110, but the buyers would then leave the area.
19 The sellers would go back into the location.

20 Q. So what you're saying is the sellers never went into
21 the house?

22 A. Yeah, they did. The sellers were in the house. The
23 buyers never went in the house.

24 Q. And Mr. Brown was in the house?

25 A. Yes.

1 Q. During the whole time?

2 A. Yes.

3 Q. Did he ever come out?

4 A. No.

5 Q. According to you, did he make any sales?

6 A. No, he didn't.

7 Q. What kind of house was this?

8 A. It was a single family, one and a half duplex type
9 house. It's in a regular neighborhood about a block,
10 maybe two blocks from Gratiot, and about three blocks from
11 Eight Mile maybe.

12 Q. It wasn't an abandon house?

13 A. No.

14 Q. Whose house was it?

15 A. I don't know. No one claimed it.

16 Q. Did you ever find out?

17 A. No.

18 Q. Did you find any drugs or money on Mr. Brown?

19 A. No.

20 Q. He was never arrested?

21 A. He was arrested and a warrant check was done on him,
22 and he was issued a citation and released at that time.

23 Q. Citation for what?

24 A. Loitering in the place of illegal occupation.

25 Q. Are you aware that the case was dismissed for lack

1 of evidence?

2 A. You keep saying lack of evidence, and probably 99
3 percent of the time the case is dismissed because we in
4 another courtroom. I went to court almost everyday in my
5 whole career.

6 Q. I understand that you said 99 percent. Is that a
7 statistic that you kept in the normal course of your
8 business?

9 A. I know that.

10 Q. I'm asking you a question.

11 A. No.

12 Q. Do you keep records --

13 A. At one point I did.

14 Q. -- of cases that were dismissed because officers
15 were not available to be in court?

16 A. At one point, yes.

17 Q. Do you know whether or not the case that Mr. Brown
18 allegedly had was dismissed because lack of evidence or
19 the police officer not showing?

20 A. I couldn't tell you right now. I've been separated
21 from the police department for eight years. I couldn't
22 tell you.

23 Q. Nothing in the police records that you just showed
24 me show the disposition of Mr. Brown's case?

25 A. No.

1 Q. Correct?

2 A. No.

3 Q. So you cannot say with any degree of certainty that
4 Mr. Brown's case was, in fact, dismissed for lack of
5 evidence?

6 A. I can't say, no.

7 Q. You can't dispute that?

8 A. No.

9 Q. Okay. Where were you during the surveillance?

10 A. One and a half houses away. I was using -- I'm
11 trying to remember what vehicle I was in -- a conversion
12 van with tinted windows. If I remember correctly it was a
13 burgundy van.

14 Q. And you never saw some people driving up to the
15 area, and the gang squad stopped the car and ordered
16 people out?

17 A. No.

18 Q. Never saw that?

19 A. No. Not gang squad. I worked narcotics.

20 Q. Or anyone from the narcotic squad?

21 A. No.

22 Q. You sure?

23 A. Yes.

24 Q. Okay. Can you show me anywhere in the -- when you
25 say PCR, preliminary complaint report?

1 A. Yes.

2 Q. Can you show me anywhere in the preliminary
3 complaint report that says that Mr. Brown was found in the
4 house at the time of the bust and arrest?

5 A. This right here is a --

6 Q. I'm asking you.

7 A. It wouldn't be in this report, no.

8 Q. What report would it say that Mr. Brown was in the
9 house?

10 A. It would be probably in the regular PCR, but I don't
11 have that.

12 Q. You have no record to show that Mr. Brown was found
13 in the house at the time of the search?

14 A. Not in this record right here, no.

15 Q. Does it exist anywhere?

16 A. I couldn't tell you.

17 Q. Where he was found?

18 A. I've been gone for eight years. I couldn't tell you
19 where anything is at anymore.

20 Q. Does it show that he was issued a citation or do you
21 think?

22 A. I know that for sure.

23 Q. How do you know that?

24 A. Because I ordered it.

25 Q. Okay. You remember that?

1 A. Oh, yes.

2 Q. But you don't remember where in the house that he
3 was?

4 A. No.

5 Q. Or even in the house?

6 A. He was in the house.

7 Q. Okay. According to no record and memory of 10 years
8 ago?

9 A. Yes.

10 Q. How many arrests did you make from since
11 December 10, 2008?

12 A. Probably about 6,000.

13 Q. Any reason why you do not have the full file?

14 A. I can't tell you where the records are. At a lot of
15 records have been destroyed since I left.

16 Q. So the potential records to show that you are in
17 potential error of something of 10 years ago among 6,000
18 arrests doesn't exist or may not exist?

19 A. I don't know about being in error, but I don't -- I
20 don't have any ties to the Detroit Police Department
21 anymore at all. I'm sorry.

22 Q. You could be wrong among the 6,000 arrests since
23 2008?

24 A. I don't think so.

25 Q. I know you don't think so, but it is possible?

1 **A.** I don't think so.

2 **Q.** I know you don't think so, but it is possible based
3 on the amount of cases that you had, and how long ago it
4 was to remember one specific incident?

5 **A.** I remember this incident. I've never been on
6 Eastburn before but that one time.

7 **Q.** Where is that written?

8 **A.** In here, sir.

9 **MR. FEINBERG:** I have no further questions.

10 **THE COURT:** Thank you.

11 **MR. FEINBERG:** I assume the witness is
12 excused so he can go back to Arizona where he is involved
13 in massage therapy?

14 **THE COURT:** Mr. Magidson?

15 **MR. MAGIDSON:** I have a couple of questions,
16 your Honor.

17

18 **CROSS EXAMINATION**

19

20 **BY MR. MAGIDSON:**

21

22 **Q.** Good morning. Are you Detective White, or what's
23 your rank now?

24 **A.** I'm an investigator.

25 **Q.** Investigator?

1 A. Yes.

2 Q. My name is Mark Magidson. I represent Mr. Shy in
3 this case. You started off in Detroit, correct?

4 A. Yes.

5 Q. And, in fact, you were raised here or not?

6 A. Yes.

7 Q. Okay. And you were from the east side?

8 A. No, I'm a west sider originally.

9 Q. I thought you mentioned that at some point --

10 A. I met an east side girl.

11 Q. And you came across?

12 A. I met an east side girl.

13 Q. It's always the woman.

14 A. Yes.

15 Q. Okay. And you wound up living, you said in the
16 Seven Mile Gratiot area?

17 A. Not that area, but I stayed off of Moross. I stayed
18 on Roxbury.

19 Q. Okay. That's further east, but you're familiar with
20 the area?

21 A. Yes.

22 Q. You have been familiar with that area going back
23 20-30 years?

24 A. Yes.

25 Q. And you remember that area when it was fully

1 occupied?

2 A. Yes.

3 Q. In fact, primarily was that the area that was known
4 as Copper Canyon?

5 A. Yes, at one point.

6 Q. That's where all the police --

7 A. All the police officers stayed over there.

8 Q. And as you recall it was primarily a Caucasian white
9 area?

10 A. Yes.

11 Q. And then sometime in the 70's, maybe the 80's, a few
12 black families started to move into the area. Would that
13 be about right?

14 A. I came over there in 90 I believe.

15 Q. Right. Based on your experience and knowledge of
16 the city, at some point a few black families started
17 moving into which was historically a white area?

18 A. Yes.

19 Q. When it was historically a white area, all of those
20 streets, those major streets like Gratiot, Kelly, all the
21 other streets over there on the east side, even Seven
22 Mile, Eight Mile, they all had businesses?

23 A. Yes.

24 Q. Actually thriving businesses because they supported
25 a thriving neighborhood?

1 **A.** Yes.

2 **Q.** But then as black families started moving in, there
3 was an exodus of white families to the suburbs?

4 **A.** Yes.

5 **Q.** Ever hear the term "white flight"?

6 **A.** Yes.

7 **Q.** People would literally leave their homes, put up a
8 for sale, but they would leave before they were sold?

9 **MR. WIGOD:** I object to the relevance.

10 **MR. MAGIDSON:** Judge, they went into great
11 detail on direct about, you know, what he did in terms of
12 buys and busts in the neighborhood, and I want to set the
13 stage a little bit about what this neighborhood is about.

14 **THE COURT:** I'll overrule the objection.

15 **MR. MAGIDSON:** Thank you.

16 So as a result, there were a lot of abandon houses
17 in that area?

18 **A.** Not in that general area of Eastburn area, but going
19 back west, yes.

20

21 **BY MR. MAGIDSON:**

22 **Q.** As people left the area, values of the housing stock
23 went down. Would you agree with that? You could pick up
24 a house in that area for pretty cheap?

25 **A.** Not that particular block, I don't think so. I

1 think Eastburn at that time had maintained their value. I
2 think more west they were losing value.

3 Q. All right. Talking about in the Seven Mile Gratiot
4 area.

5 A. Oh, yes. Yes. I understand. Some of areas, yes.

6 Q. And the businesses that were once thriving, kids
7 picking up summer jobs, part-time jobs, those businesses
8 closed?

9 A. Yes.

10 Q. And then what was historically one hardware store,
11 grocery stores, butcher shops, shoe stores, clothing
12 stores would line Gratiot, Seven Mile, all of that area,
13 they were gone?

14 A. The ones on Kelly stayed, but the ones on Seven Mile
15 left.

16 Q. Gratiot?

17 A. Yes.

18 Q. You could go blocks and blocks, and just have maybe
19 one or two stores open and five or six empty?

20 A. Yes. I believe that, yes.

21 Q. And the opportunity for -- and as the white people
22 left, the African American families moved in, correct?

23 A. Yes.

24 Q. But the opportunities for those kids were minimal,
25 the opportunities to get a job in the neighborhood store,

1 at the grocery store, the shoe store, they didn't exist
2 anymore. Would you agree with that?

3 **A.** In some areas, yes.

4 **Q.** And coincidentally, you found kids hanging out on
5 street corners in the summer or wherever and selling
6 marijuana or doing whatever to pick up some extra change?

7 **A.** Yes, I agree with that.

8 **MR. MAGIDSON:** Thank you, your Honor.

9 **THE COURT:** Thank you, Mr. Magidson.

10 Anyone else? Any redirect?

11 **MR. S. SCHARG:** No questions on behalf of Mr.
12 Porter.

13 **THE COURT:** Thank you. We'll have you step
14 down.

15 **THE WITNESS:** Thank you.

16
17 (Witness excused.)

18
19 **MR. FINOCCHIARO:** Government would call
20 William Ashford.

21
22 **W I L L I A M A S H F O R D**

23
24 being first duly sworn by the Court to tell the truth, was
25 examined and testified upon his oath as follows:

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1 **THE COURT:** We will have you begin by having
2 you state your name and spelling your last name.

3 **THE WITNESS:** William Ashford, A-s-h-f-o-r-d.

4 **THE COURT:** Thank you. Mr. Bilkovic, you may
5 proceed.

6 **MR. BILKOVIC:** Thank you, your Honor.

7
8 **DIRECT EXAMINATION**

9
10 **BY MR. BILKOVIC:**

11
12 **Q.** How are you employed?

13 **A.** Police officer with the University of
14 Michigan-Dearborn.

15 **Q.** How long have you been a police officer with the
16 University of Michigan-Dearborn?

17 **A.** One year.

18 **Q.** Prior to becoming a police officer with the
19 University of Michigan-Dearborn, what did you do?

20 **A.** I was a police officer for the Detroit Police
21 Department.

22 **Q.** How long were a police officer with the Detroit
23 Police Department?

24 **A.** Twenty-two years.

25 **Q.** And what happened after the 22 years?

1 **A.** Retired at the rank of detective.

2 **Q.** What type of things did you do with the Detroit
3 police Department? What were some of your assignments?

4 **A.** I began my career at the Eighth Precinct as a patrol
5 officer. That expanded from the Eighth Precinct to vice,
6 internal controls, narcotics conspiracy. I left narcotics
7 conspiracy and went to the Ninth Precinct and Twelfth
8 Precinct, and was promoted and went to sex crimes where I
9 retired.

10 **Q.** Do you recall what you were doing with the Detroit
11 Police Department back in May of 2006?

12 **A.** I was assigned to narcotics conspiracy for the
13 Detroit Police Department.

14 **Q.** And in 2006, how long had you been assigned to that
15 unit?

16 **A.** I had been there six years at that time.

17 **Q.** I want to take your attention to May 31, 2006. On
18 that day were you in the area of 14781 and 14791 Manning
19 in the city of Detroit?

20 **A.** Yes, I was.

21 **Q.** Is that an area that was referred to or was known as
22 the Red Zone?

23 **A.** Yes.

24 **Q.** And why were you in that area?

25 **A.** In May of 2006, I executed a search warrant for the

1 purposes of both addresses.

2 Q. What led you to the interest of those addresses?

3 A. I received information from a cooperating defendant
4 that gave me information regarding narcotics being sold
5 from those addresses.

6 Q. When you say cooperating defendant, what is a
7 cooperating defendant?

8 A. A cooperating defendant is someone that was arrested
9 and charged on a previous case that worked out details
10 with the prosecutor where he worked his time off.

11 Q. Working his time off by cooperating in order to get
12 a better results for him?

13 A. Yes, sir.

14 Q. Now did you just go and get a search warrant based
15 on information given to you by that cooperating defendant,
16 or did you do something as well?

17 A. No. It required me first to listen to the
18 information, then in receiving that information from a
19 that cooperating defendant, I myself went and did
20 surveillance on the location to see if the activity that
21 was described to me or given to me was, in fact, visible
22 or I could confirm it rather.

23 Q. Did you do that surveillance on May 31, 2006?

24 A. I did.

25 Q. What did you observe? Did you go to that area of

1 14781 and 791 Manning?

2 A. Yes, I did.

3 Q. How long were you there for?

4 A. I would say at least 15 to 20 minutes.

5 Q. During that period of time, did you observe
6 anything?

7 A. I did observe traffic that I had known to be
8 consistent with that of narcotic -- illegal narcotic
9 trafficking.

10 Q. Do you recall what that traffic was?

11 A. It would be different individuals or motorists that
12 would pull up, go to the house where they were met by an
13 individual, hand to hand exchange. They were either
14 allowed in the house or they were kept on the front porch.

15 Q. Do you recall why you were interested in both
16 houses?

17 A. That was the information that was given.

18 Q. Do you recall drafting a search warrant in this
19 case?

20 A. I do.

21 Q. And do you recall indicating in that search warrant
22 that people would go to one house, somebody would greet
23 them there, and go over to the other house, and then come
24 back?

25 A. Yes.

1 Q. Can you kind of describe that in a little bit more
2 detail?

3 A. If my memory serves correctly, the narcotics were
4 kept in one location and the money in another. The
5 customer was never taken to the house where the narcotics
6 was actually confiscated from.

7 Q. So the customer would go to one house, and somebody
8 at that house would go to the next house?

9 A. Yes.

10 Q. And then would go into the house?

11 A. Yes.

12 Q. And come back to the where the customer was?

13 A. Yes.

14 Q. And did you see any exchange that led you to believe
15 that there was some type of transaction?

16 A. I did.

17 Q. And based on what you observed, how many times did
18 you observe that in the 15-20 minutes that you believe
19 that you were there?

20 A. I believe I observed three transactions, if my
21 memory serves correctly.

22 Q. So as a result of what you observed, did you obtain
23 a search warrant?

24 A. I did.

25 Q. And were you -- did you execute the search warrant?

1 A. I did.

2 Q. Did you execute it the same day?

3 A. The next day.

4 Q. So that would have been what day, June 1st?

5 A. Yes.

6 Q. Did you do that by yourself or with others?

7 A. I was assigned to a raid team.

8 Q. What was your role with the raid team?

9 A. I was the shotgun man on the raid team.

10 Q. What is the shotgun man?

11 A. You have a breach team that breaches the door. The
12 shotgun man goes through the house, conducts what we call
13 a protective sweep to make sure the dwelling is secured,
14 and then at that point the rest of the team is brought in,
15 and we begin a search once it is declared all secured.

16 Q. Do you recall if anybody was in either of the
17 residences?

18 A. Yes.

19 Q. Did you end up making a list or preparing what's
20 called a 24 hour information sheet that describes the
21 people that were found in the residences?

22 A. I did.

23 Q. And do you have that with you?

24 A. I do.

25 Q. Can you give the names and dates of births by memory

1 or would you need to refer to that?

2 A. I would need to refer to it.

3 Q. Would you please do that? Do you have it in front
4 of you?

5 A. I have. I do not have the 24 hour sheet, but I have
6 the Aims report that the 24 hour sheet is drafted from. I
7 stand corrected. I do have the 24 hour sheet.

8 Q. That is something that you prepare?

9 A. It is in my handwriting.

10 Q. Now are there names as well as dates of birth and
11 addresses on there?

12 A. There is.

13 Q. How would you have obtained that information?

14 A. From identification.

15 Q. Identification of who?

16 A. Of the individual that the I.D. was taken from.

17 Q. Can you go through the 24 information sheet and
18 identify who was at that residence, and the what date of
19 birth was?

20 A. Yes. The first name is Michael Alexander Scott
21 Gray.

22 MR. FEINBERG: Could he spell the last name
23 of that person?

24 THE COURT: Okay.

1 BY MR. BILKOVIC:

2 Q. Spell the last name, and also give their date of
3 birth.

4 A. G-r-a-y, with a DOB of 11-29-81. The address
5 recorded is 14992 Novara.

6 Next name is James Randall Robinson. Date of
7 birth is 12-31-79, with an address of 15715 Coram.

8 Next is Robert Martin Brown, II. DOB of 4-7-82.
9 Address, 14561 Manning.

10 Next name Prentice Lee Graham, with a date of
11 birth of 7-14-80. No address recorded.

12 Next name is Quincy Lamar Graham. DOB of
13 9-13-83. Address, 23315 Pelkey.

14 And the last name, Alvin Ervin Fisher. DOB of
15 3-1-85. Address, 19319 Monarch.

16 Q. Now those six individuals, were they found in one of
17 the houses or were they split between two of the houses,
18 if you remember?

19 A. That I'm not sure of. I believe it was split
20 between the two houses.

21 Q. And can you identify who was in what house right
22 now?

23 A. No, I cannot.

24 Q. Based in part on the passage of time?

25 A. Yes.

1 Q. Do you recall whether or not controlled substances
2 were found in either location?

3 A. Yes, I do know.

4 Q. And what was found?

5 A. Cocaine. That would be from the address of 14781
6 Manning. One brown bag containing one sandwich bag of
7 suspected crack cocaine with an approximate weight of
8 65 grams.

9 Q. Officer Ashford, earlier you indicated that you
10 obtained the search warrant and executed the search the
11 next day. Do you have a copy of the search warrant
12 affidavit with you?

13 A. I do.

14 Q. And do you have the copy of the request for
15 laboratory service controlled substances report?

16 A. I do.

17 Q. And could you look at those and indicate whether or
18 not after reviewing those, you still think that the search
19 warrant was executed on June 1st versus May 31st?

20 A. It would be May 31st based on the lab analysis, and
21 going by the date of the search warrant which is also May
22 31st.

23 Q. Okay. So it would have been done the same day, the
24 search warrant and execution the same day?

25 A. Yes.

1 **MR. BILKOVIC:** May I have one moment, your
2 Honor?

3 **THE COURT:** Yes.

4

5 **BY MR. BILKOVIC:**

6 **Q.** And the year that we're talking about is 2006?

7 **A.** Correct.

8 **MR. BILKOVIC:** Nothing further.

9 **THE COURT:** Any cross?

10 **MR. FEINBERG:** Yes, sir.

11

12 **CROSS EXAMINATION**

13

14 **BY MR. FEINBERG:**

15

16 **Q.** May I see your report?

17 **A.** Yes.

18 **Q.** What is your present title?

19 **A.** Police officer.

20 **Q.** Okay.

21 **A.** Campus police officer.

22 **Q.** Okay. Officer Ashford, there were two houses
23 involved?

24 **A.** Yes, sir.

25 **Q.** One was 14781, is that correct?

1 A. Yes, sir.

2 Q. What was the other address?

3 A. 14791 Manning.

4 Q. Were they next door to one another or were there
5 houses in between?

6 A. Next door.

7 Q. You conducted surveillance?

8 A. Yes, sir.

9 Q. And that was for approximately 15-20 minutes?

10 A. Yes, sir.

11 Q. Do you have your surveillance reports?

12 A. I don't have my surveillance reports with me, sir.

13 Q. Do you know if they exist?

14 A. No, I do not at this time, no.

15 Q. Do you have what's commonly known as a PCR,
16 preliminary complaint report?

17 A. Not before me, no, I do not.

18 Q. Do you know if that exists?

19 A. No, sir, I do not.

20 Q. During the surveillance, were you able to see both
21 houses?

22 A. Yes, sir.

23 Q. Okay. Which house is the one that you say had the
24 drugs?

25 A. 14 -- referring to the preliminary analysis report,

1 14781 Manning.

2 Q. And you say that a 65 -- 65 grams of crack cocaine
3 was found at that location?

4 A. That's as packaged, yes.

5 Q. What was the net quantity?

6 A. Would you rephrase that, please.

7 Q. Sixty-five grams packaged. That means whatever it
8 was in was also weighed for that amount, correct?

9 A. Yes.

10 Q. What was the unpackaged weight?

11 A. That I don't know. I don't have the final lab
12 analysis report in front of me.

13 Q. During the 15 to 20 minutes surveillance, did you
14 ever see Mr. Brown?

15 A. As I sit before you today, I could not tell you what
16 Mr. Brown looks like. Going back to 2006, I could not
17 answer that, sir.

18 Q. You don't know whether or not he was even in the
19 house or houses during your surveillance?

20 A. I can tell you -- you said -- please ask that again.

21 Q. You don't know whether or not Mr. Brown was in
22 either of the houses during your surveillance, is that
23 correct?

24 A. That's correct.

25 Q. Okay. How long after the surveillance did you

1 execute the search warrant?

2 A. I could not provide you with the time, sir.

3 Q. It wasn't 15 minutes or an hour was it, because you
4 had to type up the search warrant, type up the affidavit,
5 find a judge to sign the search warrant, put together a
6 team, and go to the location, is that correct? Is that
7 the normal sequence?

8 A. That is the sequence of events. As to whether or
9 not the search warrant was prepared on the 30th or the
10 31st as I sit before you today, I can't tell you.
11 Normally my surveillance is done one day. The next day
12 the search warrant is done, and I say that to you because
13 I had to first take the information from the cooperating
14 defendants then go out. So --

15 Q. Where is the search warrant and the affidavit? Does
16 that exist?

17 A. It does.

18 Q. I'm talking about the affidavit, not the search
19 warrant.

20 A. It is right here, the affidavit portion.

21 Q. May I see it please?

22 A. Sure. It is all in one body.

23 Q. So according to the affidavit, the affidavit and the
24 surveillance was the same day, is that correct? It says
25 on May 31st, affiant sets up a six -- fixed surveillance?

1 **A.** Yes.

2 **Q.** And the search warrant was obtained on the 31st of
3 May?

4 **A.** Same day, yes, sir.

5 **Q.** So the sequence that I described, surveillance,
6 preparing the search warrant, and the affidavit, getting a
7 judge to sign it, put together a team, go to the location
8 and execute the search warrant, that's the normal
9 sequence, right?

10 **A.** That was the sequence for the day, yes. That's
11 accurately describes it, yes.

12 **Q.** Does it indicate which dwelling Mr. Brown was
13 alleged to have been?

14 **A.** No, it does not indicate a dwelling for Mr. Brown.
15 As I answered before, I could not tell you whether or not
16 Mr. Brown was, in fact, in any of the sequences that I
17 observed during my pre-raid surveillance.

18 **Q.** At the time the search warrant was executed, does it
19 indicate where Mr. Brown was in the house or outside the
20 house?

21 **A.** Mr. Brown would have been at 14781 Manning.

22 **Q.** Where does that say that?

23 **A.** The preliminary analysis report where the narcotics
24 were confiscated from, that was my address of execution.
25 There would have been two raid teams to execute on both

1 dwellings. I only executed on 14781. My sister crew
2 would have executed on the area of 14791. We would not
3 bring individuals from one house and put them together in
4 another house. Both raid teams would have conducted their
5 searches. You don't commingle the people. You keep them
6 separate.

7 So my 24 hour report that I comprised lists Mr.
8 Brown. That would have been the target address that I
9 executed at 14781.

10 Q. Again, you do not have a preliminary complaint
11 report as to the each -- everything that you did during
12 the execution of the search warrant and who participated
13 in the execution for each dwelling?

14 A. If I understand your question, do I have a
15 preliminary complaint for the activities that I'm
16 responsible for?

17 Q. Yes.

18 A. No, I do not in front of me. No.

19 Q. Again, I asked you before, do you know if it exists?

20 MR. BILKOVIC: Because he asked it before,
21 it's been asked and answered, and I would object.

22 THE COURT: I will sustain the objection, and
23 try to speak more into the microphone as well, Mr.
24 Feinberg.

25 MR. FEINBERG: I'm sorry, your Honor. I

1 thought I was speaking loud.

2 **MR. FEINBERG:** Was Mr. Brown arrested?

3 **A.** No, sir.

4

5 **BY MR. FEINBERG:**

6 **Q.** He was not charged with anything?

7 **A.** At this point in time I could not answer that with a
8 positive answer, no.

9 **Q.** You have no indication whether or not Mr. Brown was
10 ever charged with any crime resulting in the execution of
11 the search warrant on May 31, 2006, is that correct?

12 **A.** No, not before me. No.

13 **Q.** If not before you, you don't have any recollection
14 of Mr. Brown being arrested and charged with anything, is
15 that correct?

16 **A.** I have nothing to indicate that in front of me at
17 this point, no.

18 **Q.** I understand. At this point is when you're
19 testifying. I'm not talking about next week or a month
20 from now, but right now.

21 You have no recollection of whether or not he
22 was arrested or charged with anything?

23 **A.** From 2006, sir, no, I can't tell you if he was --

24 **Q.** A long time ago --

25 **A.** If he was charged, no.

1 Q. Was he found with any drugs on him?

2 A. I have nothing in front of me to indicate that, no.

3 Q. Any money on him that was seized?

4 A. Again, I have nothing in front of me to indicate
5 that.

6 Q. Do you remember where the drugs were?

7 A. Without the file with the reports in it, no, I
8 cannot tell you that at this point in time.

9 MR. FEINBERG: I have no further questions.

10 THE COURT: Thank you, Mr. Feinberg.

11 Anyone else?

12 MR. H. SCHARG: No questions on behalf of
13 Mr. Eugene Fisher.

14 THE COURT: Okay. Any redirect?

15 MR. BILKOVIC: No, your Honor.

16 THE COURT: Thank you, sir. You can step
17 down.

18

19 (Witness excused.)

20

21 MR. MAGIDSON: Just for the record, we have
22 no questions on behalf of Mr. Shy.

23 MR. S. SCHARG: On behalf of Mr. Porter, no
24 questions, your Honor.

25 THE COURT: All right. I gathered that.

1 Thank you.

2 All right. I think we will take a short break for
3 about 10 minutes.

4

5 (Recess taken at 10:34 a.m.)

6 (Back on the record at 10:55 a.m.)

7 **THE CLERK:** Please rise for the jury.

8 (Jury in at 10:55 a.m.)

9 **THE COURT:** Okay, folks, you can take a seat,
10 and I'll call on the government for its next witness.

11 **MS. FINOCCHIARO:** The government calls
12 Officer Gadwell.

13 **THE COURT:** Okay. Good morning.

14 **THE WITNESS:** Good morning, sir.

15 **THE COURT:** Raise your right hand, please.

16 - - -

17 **ROBERT GADWELL,**

18 being first duly sworn to tell the truth, was examined and
19 testified upon his oath as follows:

20 **THE COURT:** All right. Take a seat, please.

21 We're going to have you begin by stating your name and
22 spelling your last name. You've got to find the sweet
23 spot with the microphone. If it's too close, it's going
24 to cut off, and if it's too far, we're not going to hear
25 you.

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1 **THE WITNESS:** Okay. Robert Gadwell, last
2 name spelled G-a-d-w-e-l-l.

3 **THE COURT:** Okay. Thank you.
4 You may proceed, Mr. Wigod.

5 **MR. WIGOD:** Thank you, Your Honor.

6 - - -

7 (10:57 a.m.)

8 **DIRECT EXAMINATION**

9 **BY MR. WIGOD:**

10 **Q.** Sir, can you please tell the jury what it is you do
11 for a living?

12 **A.** I'm a Detroit police officer.

13 **Q.** How long have you been a Detroit police officer?

14 **A.** 22 years this summer.

15 **Q.** And can you tell the jury, please, what your current
16 assignment is?

17 **A.** I work for Detroit Mounted Police.

18 **Q.** Before being assigned to the Mounted Police
19 Division, what did you do?

20 **A.** Directly before this I worked for the Gang
21 Intelligence Team for approximately five years. I worked
22 at the Ninth Precinct before that, and before that I
23 worked at Narcotics Enforcement, and then one more stop
24 was at the Second or Southwest District.

25 **Q.** Now, when you worked for the Narcotics Division,

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1 what type of cases did you handle?

2 A. Narcotics.

3 Q. I know. More specifically. Like street level?

4 A. Yeah, well, it depends. Mostly street-level
5 narcotics unless we had some kind of information that took
6 us to anything further.

7 Q. Are you familiar with the Manning and Gratiot area?

8 A. Yes.

9 Q. I want to draw your attention back to April 25th of
10 2008. Did you have an opportunity to conduct an
11 investigation of a residence there at 14164 Manning?

12 A. Yes.

13 MR. FEINBERG: I'm sorry, what's the address?

14 MR. WIGOD: 14164 Manning.

15 MR. FEINBERG: Thank you.

16 THE WITNESS: Yes.

17 BY MR. WIGOD:

18 Q. Can you explain for the jury what your investigation
19 initially involved?

20 A. I went there with the team members to execute a
21 search warrant.

22 Q. Okay. Let's back up. Can we talk about the search
23 warrant before?

24 A. Have we talked -- I'm sorry?

25 Q. No. Before you execute a search warrant at that

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1 residence?

2 A. Yes.

3 Q. And you are the one who obtained the search warrant?

4 A. Yes.

5 Q. And what did you do to go about obtaining the search
6 warrant? What was your reasoning for obtaining the search
7 warrant?

8 A. We get information on locations, complaints, and
9 they may have or might just make some observations, but in
10 order to obtain a search warrant, I conducted an
11 undercover, not an undercover, but a SOI buy, which would
12 be a source of information, had an informant purchased
13 narcotics from the location, and that was what was used
14 for PC to get into the location.

15 Q. Okay. When you say PC?

16 A. Probable cause, I'm sorry.

17 Q. No, that's okay. So just as far as the dates, you
18 had contact with a source of information?

19 A. Yes.

20 Q. And that was on April 25th, 2008?

21 A. If I can double-check.

22 Q. If you want to check your search warrant, that's
23 fine or --

24 A. Yes, it was the 25th.

25 Q. Okay. And walk us through what occurred on that

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1 date.

2 A. Well, what usually happens, and what happened in
3 this case, was went to the location with information as
4 possibly sales being conducted at the location. I had a
5 source of information, an informant, and conducted a
6 search of the informant, issued that informant an amount
7 of currency and instructed the informant to purchase
8 narcotics from the location. Physically watched the
9 informant approach the location and come directly back
10 with an amount of narcotics, and the informant was again
11 searched to make sure that there was no other contraband
12 on him or her.

13 Q. So just to recap briefly, you received information
14 in some way, shape or form that there's potential
15 narcotics at this address?

16 A. Yes.

17 Q. You then have a source of information go and buy
18 narcotics there?

19 A. Yes.

20 Q. All right. Now, you mentioned that you searched the
21 SOI or source of information before the source goes and
22 purchases the drugs from the residence?

23 A. Correct.

24 Q. And that's for what reason?

25 A. To make sure they are not bringing any narcotics

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1 with them and lying and saying they bought it there.

2 Q. Okay. And you give the source money to buy drugs
3 there?

4 A. Correct.

5 Q. So in this instance you searched the source, you
6 gave the source money, the source went to that residence
7 and purchased narcotics, and then came back to you?

8 A. Correct.

9 Q. Do you recall what type of narcotics the source
10 purchased?

11 A. On that date the source bought cocaine, I believe.
12 Let me check my report, I'm sorry.

13 Q. No, that's fine.

14 A. Yes, it was an amount of cocaine.

15 Q. And, based on what happened with the source of
16 information, you obtained a search warrant to go and
17 conduct a search at that residence; is that right?

18 A. Yes, the narcotics purchase was placed on evidence
19 and used for any future proceedings type thing, and I
20 prepared a search warrant and then the next day we
21 executed the search warrant.

22 Q. Okay. So that would have been April 26, 2008?

23 A. Yes.

24 Q. Can you walk us through the execution of the search
25 warrant? Just start just generally, do you have a team,

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1 how many people, things of that nature.

2 A. Yes, there is a team of officers that I work with on
3 a regular basis that is led by Sergeant Larry Meinke. It
4 was about four or five other officers there. There was
5 Jason Kleinsorge, Michael Rison, Sandra Chavez. I'm
6 drawing a blank, it's been so long --

7 Q. Okay. No, that's fine.

8 A. -- who was there that day.

9 Q. You have a report, a brief report involving the
10 execution of the search warrant as well?

11 A. Yes.

12 Q. So if you need to refresh your memory with that,
13 that's fine, okay?

14 A. The only other person I think I could add was
15 Larry Williams and Aaron Yopp.

16 Q. Okay. That's fine. Now, what type of residence was
17 this?

18 A. It's a private, single-family residence.

19 Q. Was it occupied or vacant?

20 A. You know, I believe it was vacant, but I can't
21 recall 100 percent.

22 Q. Okay. Would your report refresh your memory?

23 A. Possibly.

24 Q. Do you have it there in front of you?

25 A. Yes.

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1 **MR. WIGOD:** May I approach the witness,
2 Your Honor?

3 **THE COURT:** Yes, you may.

4 **THE WITNESS:** Okay.

5 **BY QUESTIONER:**

6 **Q.** So does your report refresh your memory as far as
7 whether or not this dwelling was occupied or vacant?

8 **A.** Yes. We determined that it was vacant on that date.

9 **Q.** Now, the various individuals who were on the team to
10 execute the search warrant had various responsibilities?

11 **A.** Yes.

12 **Q.** Such as?

13 **A.** We usually have a shotgun person, which was my
14 duties that day. We have somebody on the ram, somebody on
15 the halogen, some people on just entry. Some people were
16 on outer security.

17 **Q.** Okay. So what's the shotgun position? What does
18 that mean?

19 **A.** As the shotgun man, I was the first person to enter
20 the location. I physically cleared the entire location,
21 making sure if there was anybody inside that they were
22 secured and that nobody was hiding anywhere.

23 **Q.** Okay. And did you do that in this case?

24 **A.** Yes.

25 **Q.** And tell us what happened.

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1 **A.** Upon coming into the front of the location, an
2 individual exited a bedroom and ran into the bathroom. I
3 pursued him into the bathroom. As I entered the bathroom,
4 I seen him -- he was, when he exited, he had some baggies
5 in his hand and he was running towards the bathroom. He
6 got into the bathroom, and when I got into the bathroom,
7 his right hand was in the toilet, like his hand was in the
8 hole going down the drain, and his left hand was flushing
9 the toilet.

10 One of the baggies that he was running into the
11 bathroom with fell onto the floor. At that point of the
12 clearing the location we're not worried about securing
13 evidence, but I did let Officer Kleinsorge know that he
14 had dropped the narcotics on the floor after that
15 individual was detained, and once it was cleared, I
16 believe he confiscated the --

17 **MR. FEINBERG:** Objection to what he believes.

18 **BY MR. WIGOD:**

19 **Q.** What did you see?

20 **A.** After we were secured, I know that I observed him
21 confiscate baggies off the floor.

22 **Q.** You mentioned you were the first person through the
23 door?

24 **A.** Yes.

25 **Q.** Now, being the first person through the door, at

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1 that point in time you are not concerned with any sort of
2 evidence or actually executing the search warrant. You
3 are concerned with what?

4 A. My main concern is to secure the location.

5 Q. Okay. Safety?

6 A. Safety.

7 Q. All right. So when you go in, you are going at --
8 you are announcing your presence?

9 A. The entire time.

10 Q. Meaning what?

11 A. Upon approaching and in the midst of clearing the
12 location I continually announced, "Detroit Police, search
13 warrant."

14 Q. And while you do that after you entered the house
15 you mentioned you saw someone do what?

16 A. He came running out of the back bedroom and straight
17 into the bathroom.

18 Q. And were you able at some point in time later on to
19 identify who that person was?

20 A. Yes.

21 Q. And who was that?

22 A. That was Prentice Graham.

23 Q. Prentice Graham?

24 A. Yes.

25 Q. So Mr. Graham, Prentice Graham was the individual

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1 who ran into the bathroom and had his hand in the toilet?

2 A. Yes.

3 Q. All right. What did you believe him to be doing at
4 that point in time?

5 A. Destroying evidence.

6 Q. Were there other individuals also in the residence?

7 A. I don't believe they were in. I think they were in
8 the yard. There was a Quincy Graham and a Steve Arthur.

9 Q. So Quincy Graham and Steve Arthur were also at the
10 residence but not necessarily inside of the residence?

11 A. Correct.

12 Q. If we could go back for a second and talk about --
13 we got to the point where you indicated it was a vacant
14 dwelling?

15 A. Yes.

16 Q. Can you describe or does your report refresh your
17 memory as far as what sort of furniture was in there?

18 A. No. I don't recall that information, and it's been
19 so long.

20 Q. Okay. And what about any electricity?

21 A. I believe the electricity was illegal.

22 Q. Okay. And how is illegal electricity obtained? How
23 does that happen?

24 A. There's several ways. I don't particularly remember
25 the exact way that this one was done, but some of them are

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1 either --

2 **MR. FEINBERG:** Objection, Your Honor. If he
3 doesn't remember, he can't testify as to this incident.

4 **MR. WIGOD:** He can testify generally how
5 illegal electricity is attached to a vacant dwelling.

6 **THE COURT:** The Court will permit the
7 question.

8 **THE WITNESS:** And the ways that we determine
9 if electricity is illegal is like at the meter there is
10 either jump wires, bars or something to jump the
11 electricity over or cords running from either the pole or
12 another location.

13 **BY MR. WIGOD:**

14 **Q.** Okay. So it basically bypasses the meter?

15 **A.** It's an obvious way to determine, yes.

16 **Q.** You had an opportunity to seize some evidence during
17 your time at this vacant dwelling?

18 **A.** Yes.

19 **Q.** Do you recall what it was that you seized?

20 **A.** I seized some marijuana from the back bedroom on a
21 small table, and I observed the narcotics that was dropped
22 on the floor in the bathroom, the sandwich bag containing
23 cocaine and heroin.

24 **MR. WIGOD:** Okay. Your Honor, may I approach
25 the witness?

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1 **THE COURT:** Yes.

2 **BY MR. WIGOD:**

3 **Q.** Showing you what's been marked as Government's
4 Proposed Exhibit Number 198, can you tell us what this is,
5 please.

6 **A.** This is three sandwich bags of marijuana.

7 **Q.** Is this the marijuana that you seized from the back
8 bedroom?

9 **A.** Yes.

10 **MR. WIGOD:** Your Honor, at this time I would
11 move for admission of Government's Proposed Exhibit Number
12 198.

13 **MR. DALY:** No objection.

14 **THE COURT:** All right. Thank you. The Court
15 will receive it.

16 **MR. WIGOD:** Your Honor, if I could have a
17 moment.

18 **THE COURT:** Yes.

19 **MR. WIGOD:** Your Honor, I don't have any
20 further questions of this witness.

21 **THE COURT:** Thank you, Mr. Wigod.

22 Any cross-examination?

23 **MR. H. SCHARG:** No questions on behalf of
24 Eugene Fisher.

25 **THE COURT:** Thank you.

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1 **MR. DALY:** Your Honor, no questions on behalf
2 of Mr. Bailey.

3 **THE COURT:** Thank you.

4 **MR. FEINBERG:** No questions on behalf of
5 Mr. Brown.

6 **THE COURT:** Thank you.

7 **MR. THEIS:** None on behalf of Mr. Shy.

8 **MR. S. SCHARG:** None on behalf of Mr. Porter.

9 **THE COURT:** Okay. Thanks.

10 We'll have you step down then. Thank you.

11 **MS. FINOCCHIARO:** At this time, Your Honor,
12 the government calls Officer Kleinsorge.

13 **THE COURT:** Okay.

14 Good morning.

15 **THE WITNESS:** Good morning.

16 **THE COURT:** I'll have you take an oath.

17 - - -

18 **JASON KLEINSORGE,**

19 being first duly sworn to tell the truth, was examined and
20 testified upon his oath as follows:

21 **THE COURT:** All right. Take a seat, please.
22 I'm going to have you begin by stating your name and
23 spelling your last name for us.

24 **THE WITNESS:** Jason Kleinsorge. Last name,
25 K-l-e-i-n-s-o-r-g-e.

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1 A. Yes.

2 Q. And, just generally speaking, that's Seven Mile and
3 Gratiot area?

4 A. Generally, yes.

5 Q. Do you recall, were you on a team of individuals who
6 executed a search warrant?

7 A. Yes, I was with the Narcotics Enforcement crew in
8 the Eastern District.

9 Q. And do you recall who the other individuals were on
10 your team?

11 A. It would have been Sergeant Meinke, Officer Gadwell,
12 Officer Williams, Officer Yopp, Officer Chavez.

13 Q. You were there to execute a search warrant?

14 A. That's correct, sir.

15 Q. Do you recall what your assignment was that day?

16 A. I was in charge of the ram position.

17 Q. What does that mean?

18 A. The ram position is the instrument that you use to
19 force the door open. If the door is closed or if the door
20 is locked, you have to force the door open.

21 Q. And did you do that in this case?

22 A. The door was open, but there was a security grate on
23 the door. The security grate had to be forced open.

24 Q. Okay. Do you remember what type of residence this
25 was?

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1 A. It's a single-family dwelling.

2 Q. And was it vacant or occupied?

3 A. It was vacant.

4 Q. Okay. When you rammed the door, what do you do?

5 A. At that point in time I rammed the door, I step
6 back, the shotgun man goes in along with shotgun backup.

7 Q. Are the individuals on the team announcing?

8 A. Yes.

9 Q. Announcing what?

10 A. Presence and purpose of why we are there, and that's
11 before we hit the door.

12 Q. Okay. So you say what generally?

13 A. "Search warrant, Detroit Police."

14 Q. Do you remember who was the shotgun on that day?

15 A. It would have been Officer Gadwell.

16 Q. So he's the first one in?

17 A. Correct.

18 Q. After he's in -- and he goes in essentially to
19 secure the premise?

20 A. Yes.

21 Q. When I say "secure," basically make sure it's safe?

22 A. Yes.

23 Q. And after he goes in do the rest of the team members
24 follow?

25 A. Yes, we would. Shotgun backup and then whoever else

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1 is behind them, we go in as a team.

2 Q. And do you remember where you went when you went
3 into the residence?

4 A. If I could refer to my PCR for clarification, but I
5 pretty much remember. I don't remember exactly where we
6 went.

7 Q. If that will refresh your memory, please.

8 A. Yes.

9 Yeah, on this incident Officer Gadwell was
10 pursuing individuals, and he pursued an individual into
11 the bathroom of the location and he -- Officer Ginsler was
12 behind him and then myself.

13 Q. Okay. So you followed Gadwell into the bathroom?

14 A. Correct.

15 Q. All right. And what did you see in the bathroom?

16 A. There was an individual in the bathroom on the
17 floor.

18 Q. Okay. Did you find any controlled substances in the
19 bathroom?

20 A. I was advised by Officer Gadwell that --

21 MR. FEINBERG: Objection, hearsay.

22 MR. WIGOD: It's only to show what he did
23 next, Your Honor, not offered for the truth.

24 THE COURT: I will allow the question.

25 THE WITNESS: That narcotics was discarded,

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1 and I confiscated narcotics.

2 **MR. WIGOD:** Okay. Your Honor, may I approach
3 the witness?

4 **THE COURT:** Yes.

5 **BY MR. WIGOD:**

6 **Q.** Officer, I'm showing you what's been marked as
7 Government's Proposed Exhibits 196 and 197. Will you tell
8 us what those are?

9 **A.** 197 is going to be the lock seal folder. It's the
10 evidence folder that we would put the evidence in once we
11 bring it in. It's put in a lock seal folder.

12 **Q.** And before we get to 196, is there actually evidence
13 in that folder?

14 **A.** Yes. Inside this folder appears to be a Ziploc of
15 what would be the heroin. It comes in Lotto papers, in
16 small pieces that's folded up, and that would be the
17 heroin.

18 **Q.** Did you find that and confiscate that from the
19 bathroom floor?

20 **A.** Yes. All of this stuff was inside of a sandwich
21 bag. There was a Lotto pack of heroin and seven Ziploc --
22 or knotted bags of cocaine.

23 **Q.** And that's 196?

24 **A.** It's evidence tag 196.

25 **Q.** So the heroin and the cocaine were all together

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1 essentially?

2 A. Inside of a sandwich bag, correct.

3 MR. WIGOD: Your Honor, at this time I move
4 for admission of Government's Proposed Exhibits Number 196
5 and 197.

6 MR. DALY: No objection.

7 THE COURT: All right. Thank you. The Court
8 will receive the item.

9 BY MR. WIGOD:

10 Q. Just going back to 197 real quick, the heroin. You
11 said it comes in, heroin, in Lotto folds?

12 A. Correct.

13 Q. Obviously it's not produced that way. What do you
14 mean?

15 A. No. What happens is the Lotto pack, the Lotto
16 things that you go into parties stores and just pick up to
17 write on --

18 Q. The ticket?

19 A. The ticket, yeah, the Lotto tickets. They are tore
20 up and folded in certain sections and that's what they
21 sell the heroin in.

22 Q. So the heroin is put inside the Lotto folds and then
23 sold to users?

24 A. Distributed that way, correct.

25 Q. I'm sorry, going back to the cocaine for a minute,

1 how many pieces of cocaine, crack cocaine are here, and
2 that's 196?

3 A. It appears to be seven.

4 Q. Okay. And how were they packaged?

5 A. They are individually knotted bags, torn off pieces
6 of plastic that they are put in and they are twisted.
7 It's like a corner of a sandwich bag, and then they put it
8 in the sandwich bag and twist it off and they can tie it
9 that way.

10 Q. Okay. And that's commonly how it's distributed as
11 well?

12 A. Yes.

13 Q. If I could also talk to you about an incident that
14 occurred back on November 28th of 2007. Have you had an
15 opportunity to review your report regarding that incident?

16 A. Yes, I was able to.

17 Q. And can you tell us what was going on on that day?

18 A. In 2007 that was a street enforcement operation.

19 Q. What does that mean, street enforcement operation?

20 A. Street enforcement operations are normally conducted
21 on vacant houses, on a vacant house. You would not need a
22 search warrant. So we would go by and we would check, and
23 I believe in this there was lights on inside of the vacant
24 house. Either we had been there before or we had
25 complaints on the location, and that's why we were there.

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1 Q. You were, again, with other individuals on the
2 narcotics team?

3 A. That's correct.

4 Q. Do you recall who they were?

5 A. I believe it was most of the same individuals. It
6 would be the same raid crew.

7 Q. Okay. And do you recall why it was that you were
8 checking on -- and what address was this?

9 A. This was -- if I could refer to my PCR.

10 Q. If that will refresh your memory, that will be fine.

11 A. Yes, it would. This address is going to be 14754
12 Manning.

13 Q. So, again, an address on Manning Street?

14 A. That's correct.

15 Q. And you were giving special attention for narcotics
16 activity at this address?

17 A. Yes, sir.

18 Q. Was that based on what?

19 A. I don't recall whether it was a complaint through
20 224-dope or if it was a known narcotics location we were
21 at at another time.

22 Q. And you mentioned -- because this was a vacant
23 dwelling, do you recall whether there was any running
24 water?

25 A. According to my PCR, it was a vacant location.

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1 There was no running water. It had illegal electrical
2 hookup.

3 Q. Okay. You mentioned because it was a vacant
4 dwelling you don't need a search warrant to go in?

5 A. Correct.

6 Q. And so did officers go in as if you were executing a
7 search warrant?

8 A. Yes.

9 Q. Okay. So basically you, again, announced your
10 presence?

11 A. Presence and purpose. That's strictly for officer
12 safety also.

13 Q. Okay. And were there individuals inside the vacant
14 dwelling?

15 A. Yes, there was. There was five individuals.

16 Q. Can you please tell us who they were?

17 A. According to my PCR, Terrence Hampton,
18 Diondre Fitzpatrick, Juwan Adams, Quincy Jones and
19 Dominic Holloway.

20 Q. Going back to Mr. Hampton for a minute, did you have
21 a middle name for him?

22 A. Oh, Terrence Lee Hampton.

23 Q. And a date of birth?

24 A. It was 8-21-87.

25 Q. And did you know if any narcotics were located

1 inside of the residence or on any individuals inside of
2 the residence?

3 A. When we approached the location, subjects were
4 running out of the location and there was a brief foot
5 chase.

6 Q. Okay. Was it your impression that they were running
7 based on your presence?

8 A. Yes. And there was a brief foot chase, and
9 individuals were caught, two individuals were caught with
10 narcotics on them.

11 Q. And who were the two individuals who were caught
12 with narcotics on them?

13 A. Number 1 is Terrence Lee Hampton and Number 2,
14 Diondre Barnett Fitzpatrick.

15 Q. And do you recall what narcotics Mr. Hampton had on
16 himself?

17 A. Mr. Hampton was possession with intent to deliver
18 marijuana.

19 Q. So he had marijuana with distribution quantity?

20 A. That's correct.

21 Q. Or an indication that he was intending on selling
22 it?

23 A. Yes.

24 Q. And as far as Mr. Fitzpatrick?

25 A. Mr. Fitzpatrick had cocaine in his possession.

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1 **Q.** Mr. Fitzpatrick had distribution quantities of
2 cocaine?

3 **A.** That's correct.

4 **MR. WIGOD:** Your Honor, if I could have a
5 moment.

6 **THE COURT:** Yes.

7 **MR. WIGOD:** Your Honor, I don't have any
8 further questions.

9 **THE COURT:** Okay. Thank you.

10 Any cross?

11 **MR. H. SCHARG:** No questions on behalf of
12 Eugene Fisher.

13 **MR. DALY:** We have no questions.

14 **MR. FEINBERG:** No questions on behalf of
15 Mr. Brown.

16 **MR. THEIS:** No questions, Your Honor.

17 **MR. S. SCHARG:** No questions, Your Honor.

18 **THE COURT:** All right. Thank you.

19 Thank you, Officer. You may step down.

20 **THE WITNESS:** Thank you, Your Honor.

21 **MS. FINOCCHIARO:** At this time, Your Honor,
22 the government calls Officer Howard Sweeney.

23 **THE COURT:** Okay.

24 Mr. Sweeney?

25 **THE WITNESS:** Yes, sir.

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1 **A.** I'm employed with the City of Detroit. I'm employed
2 with the City of Detroit. City of Detroit employee, 18
3 years.

4 **Q.** And what do you do for the City of Detroit?

5 **A.** I'm a police corporal with the City of Detroit
6 Training Section.

7 **Q.** What does that mean? What are your job
8 responsibilities?

9 **A.** I'm one of the trainers. I have been at the Detroit
10 Police Academy for four years. I train all of the members
11 that come to the police academy as well as the in-service
12 members of all ranks.

13 **Q.** Prior to doing that what did you do with the Detroit
14 Police Department?

15 **A.** Worked several entities. I was working Special
16 Operations in the Eastern District at the time of this
17 incident.

18 **Q.** When you say "this incident," are you talking about
19 the incident that occurred back on August 30th, 2007?

20 **A.** Yes, sir.

21 **Q.** I'm going to take your attention back to that day
22 around 12:15 to 12:30 in the morning. What was your
23 assignment back then?

24 **A.** I was working the Eastern District Special
25 Operations Section. I was assigned to the tire car at

1 that time with a Sergeant Corey Carson and Police Officer
2 James Ojay.

3 Q. What is Special Operations?

4 A. Special Operations Section, we work plain clothes,
5 we work plain clothes, primarily plain clothes, and we
6 work and deal with all of your narcotics, your handgun
7 violations so your concealed weapons, your shootings, your
8 robberies, your car jackings, rapes, all of your
9 high-priority crimes at a precinct level.

10 Q. Are there special areas then that you focus on
11 within the city or that you were focused on within the
12 city?

13 A. Yes, sir.

14 Q. You said something about you were in a tire car?

15 A. Yes, sir. It's just an identification of the
16 vehicle. It was an all-black Ford Crown Victoria. I
17 believe it was a 2005 or '6 at the time. It was all black
18 with the emergency lights in the front window and the rear
19 dash, in the rear window, as well as it says "Detroit
20 Police" in gold letters on both the driver and passenger
21 sides as well as it says in gold letters on back tire
22 unit.

23 Q. Is there any reason that you would use that vehicle
24 versus a regular fully marked patrol vehicle?

25 A. That was just one of the vehicles as well as our

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1 unmarked all black cars we use in the Special Operations
2 as plain clothes officers.

3 Q. On August 30th -- well, let me ask you this. Are
4 you familiar with the area around Seven and Gratiot in the
5 City of Detroit?

6 A. Yes, sir.

7 Q. And are you familiar with Manning Street in that
8 area?

9 A. Yes, sir.

10 Q. Are you familiar with the term the Red Zone?

11 A. Yes.

12 Q. How are you familiar with the term the Red Zone?

13 A. Just an area that was referred to by being the Seven
14 Mile Bloods area.

15 Q. And is that something you were then familiar with
16 back in 2007?

17 A. Yes, sir.

18 Q. And does that area include the area on Manning
19 Street near Seven and Gratiot?

20 A. Yes, sir.

21 Q. So on August 30th, 2007 you were with the other
22 two officers riding around in your patrol car?

23 A. Yes, sir.

24 Q. And you were in the area of 14560 Manning in the
25 City of Detroit?

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1 A. Yes, sir.

2 Q. Did something happen that -- well, first of all,
3 what were you doing in that area?

4 A. Just on routine patrol at the time.

5 Q. And did something happen in that area that attracted
6 your attention?

7 A. Yes, sir.

8 Q. What was that?

9 A. Just upon driving the area of Gratiot and Manning we
10 proceeded to turn onto Manning Street from Gratiot. Upon
11 driving down the street, observed a known vacant dwelling,
12 observed movement in the top front window of that
13 location.

14 Q. Now, you said you observed a known vacant dwelling?

15 A. Yes, sir.

16 Q. And would that have been the dwelling at 14560
17 Manning?

18 A. Yes, sir.

19 Q. Back at that time was it -- were there -- was it
20 common to have vacant dwellings or vacant houses in that
21 area?

22 A. Yes, sir, it was.

23 Q. When you say it was a known vacant dwelling, did you
24 know that pulling up that day?

25 A. Yes, sir. I had been to the location previously.

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1 Q. And when you were pulling up or driving by that
2 location, what was it that you observed?

3 A. I observed as we were pulling up to the location
4 there was some kind of backlight in the upstairs window
5 that you could see movement so it was not completely
6 blacked out. You could see movement of an individual in
7 the top upstairs window. We proceeded at that time to
8 decide to go and investigate same.

9 Q. Why did you do that?

10 A. Just because of the area and activity, we had been
11 over there and the arrests we made in the area of that
12 location, we decided to investigate for possible narcotics
13 or weapons.

14 Q. Should there have been anybody in that house?

15 A. No.

16 Q. So what did you do at that point?

17 A. Proceeded to exit the vehicle. I proceeded up to
18 the left side of that house. The house didn't have a
19 driveway on either side, but the left side of that house
20 had a side door.

21 Q. And so what did you do?

22 A. Proceeded to go towards the rear of the house. At
23 that time I observed a female, I believe it was a white
24 female, exit the side door of that location.

25 Q. And what was done with that female?

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1 A. I briefly just detained her long enough to pass her
2 to one of my partners.

3 Q. And did one of your partners end up having contact
4 with that female?

5 A. Yes, sir.

6 Q. So what did you do?

7 A. I proceeded to go inside the side door of that
8 location.

9 Q. When you went inside of the location, did you
10 announce your presence in any way?

11 A. Yes, sir.

12 Q. What did you do?

13 A. Just identified myself as "Detroit Police
14 Department, police," as I'm coming in.

15 Q. Did you do that one time or more than once?

16 A. I believe more than once, sir.

17 Q. Why would you have done that?

18 A. Just to announce our presence at the location as
19 being police coming in the door.

20 Q. And what would be the purpose?

21 A. Just for the reason that if somebody was inside they
22 would know it's the police coming in versus someone else,
23 just for identification purposes to make our presence
24 known.

25 Q. So what did you do once you got inside the location

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1 and did that?

2 A. I proceeded in that location. I proceeded -- just
3 because right inside the door was the basement right
4 there, I proceeded down to the basement of that location.

5 Q. And what did you do down in the basement?

6 A. Proceeded to enter the basement and to check the
7 location for any persons.

8 Q. Did you find anybody in the basement?

9 A. Yes, sir.

10 Q. Who did you find in the basement?

11 A. Mr. Corey Bailey.

12 Q. And do you know -- do you have information as to
13 Corey Bailey's birth date?

14 A. Not offhand, sir.

15 Q. Okay. Do you have your report with you or no?

16 A. No, I don't, sir.

17 Q. Okay. Is Corey Bailey somebody that you had seen in
18 the past?

19 A. Yes, sir.

20 Q. So did you recognize him when you saw him?

21 A. Yes, sir.

22 Q. And what was Mr. Bailey doing in the basement?

23 A. He was just behind -- he made himself pretty much,
24 concealed himself behind like a water heater/furnace
25 configuration. He wasn't out visible when I went into the

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1 basement. He was just behind it.

2 Q. And what did you do at that point?

3 A. I proceeded just to order him out, went over to him
4 and detained him at the time.

5 Q. And did he follow your instructions at that point?

6 A. Yes, sir. As I got over to him, I placed him in
7 handcuffs, placed him under arrest, and then I proceeded
8 to pat him down.

9 Q. During the pat-down did you find anything?

10 A. Yes, sir.

11 Q. What did you find?

12 A. Sticking out the rear of his boxers, so he had some
13 boxers underneath his pants, he had -- it was a plastic
14 wrap sticking out from the top of it, pulled that out and
15 observed it to have a couple plastic wraps of suspected
16 cocaine, crack cocaine.

17 Q. When you say "a couple," there were two?

18 A. Yes, sir, two.

19 Q. Two separate?

20 A. Two separately packaged, individually packaged
21 suspected crack cocaine.

22 Q. And did you then recover that from Mr. Bailey?

23 A. Yes, sir.

24 Q. Do you know if there was electricity on in the
25 residence?

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1 **A.** At the time there was, I believe it was, jumped
2 electricity. I don't remember myself looking at it, but
3 it did have some kind of electricity because of the
4 lighting upstairs.

5 **Q.** Okay. That wasn't a flashlight then, there was a
6 light on up there?

7 **A.** Yes, sir.

8 **Q.** Do you know if anybody else was inside of that
9 location at that time?

10 **A.** Yes, sir. There was approximately five other
11 individuals in the location.

12 **Q.** And that was done with those individuals?

13 **A.** My partners issued them tickets.

14 **Q.** And do you know where they were located?

15 **A.** They were in the location. I'm not sure. I know
16 some were upstairs. I'm not sure of their whole
17 configuration inside of the house at the time, but there
18 were I believe five individuals inside that location in
19 addition to Mr. Bailey.

20 **Q.** Anybody else in the basement other than Mr. Bailey?

21 **A.** No, sir.

22 **Q.** If I were to show you your report, would that
23 refresh your memory with respect to Mr. Bailey's birth
24 date?

25 **A.** Yes, sir.

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1 Yes, sir. Date of birth, January 29th of 1988.

2 Q. What was done with the cocaine that was recovered?

3 A. I placed it on evidence.

4 Q. And what does that mean?

5 A. I recovered it and then placed it on evidence so it
6 can be processed. They will do -- will take it to
7 narcotics once it was placed on evidence. They would do a
8 preliminary analysis of the narcotics, then it would go --
9 be placed on lock seal, at which time it would be sent
10 over for actual laboratory analysis to confirm that it is
11 in fact cocaine.

12 MR. BILKOVIC: I have nothing further.
13 Hopefully you will find the sweet spot if there is
14 cross-examination questions.

15 THE WITNESS: Thank you, sir.

16 THE COURT: Thank you, Mr. Bilkovic.

17 Mr. Scharg?

18 MR. H. SCHARG: No questions on behalf of
19 Mr. Eugene Fisher.

20 THE COURT: Thank you.

21 Mr. Daly?

22 MR. DALY: Thank you, Judge.

23 - - -

24

25

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(11:35 a.m.)

CROSS-EXAMINATION

BY MR. DALY:

Q. Officer Sweeney, good morning.

A. Good morning, sir.

Q. You are talking about an incident that happened in 2007; is that correct?

A. Yes, sir.

Q. So we're talking over ten years ago?

A. Yes, sir.

Q. And would it be fair to say you have no independent recollection of this incident unless you look at your report?

A. Negative, sir.

Q. You remember everything that happened, what was done, who said what?

A. I do remember the incident itself, sir, and I do remember making an arrest. I don't remember every individual at the location besides Mr. Bailey, but I do have independent recollection of the incident, yes, sir.

Q. Okay. A lot has happened since then; is that correct?

A. Yes, sir.

Q. You have made a number of arrests?

A. Yes, sir.

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1 Q. Involving narcotics?

2 A. Yes, sir.

3 Q. Dozens, if not hundreds, right?

4 A. Correct, sir.

5 Q. And before you testified did you read your report to
6 refresh your recollection?

7 A. Not today, sir, but yes, sir.

8 Q. Previously, right?

9 A. Yes, sir.

10 Q. And on this particular day you were on routine
11 patrol?

12 A. Yes, sir.

13 Q. And this particular address, you didn't have any
14 information that day regarding narcotics activity,
15 correct?

16 A. Correct, sir.

17 Q. And so you are in this black Crown Vic, right?

18 A. Yes, sir.

19 Q. Basically cruising the neighborhood, right?

20 A. Yes, sir.

21 Q. No specific assignment with regards to any
22 particular person, right?

23 A. No person, yes, sir.

24 Q. You were not looking for Corey Bailey, right?

25 A. Correct, sir.

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1 Q. You didn't have an arrest warrant for him, right?

2 A. Correct, sir.

3 Q. And are you the driver of the vehicle?

4 A. I do not believe I was the driver, sir, but I do not
5 recall. I don't remember driving.

6 Q. It's late at night?

7 A. Yes, sir.

8 Q. Dark out, right?

9 A. Yes, sir.

10 Q. And as you go by this particular house, there's a
11 silhouette upstairs, right?

12 A. Yes, sir.

13 Q. And tell the jury who that person was, that
14 silhouette?

15 A. I couldn't tell you who that was at the time. I
16 couldn't even tell you that day because of the actual
17 shadowing of the individual. I could tell it was a human
18 being. I couldn't tell you if it was a male or female.
19 It was just the lighting. They went past that lighting in
20 that window of the upstairs, and I knew there was a person
21 in that location.

22 Q. All right. You can't describe the person, right?

23 A. Correct, sir.

24 Q. And you're not saying it was Corey Bailey, are you?

25 A. Correct, sir, I'm not.

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1 Q. But that drew your attention to the building to go
2 inside, right?

3 A. Correct, sir.

4 Q. And when you went to the side of the house, there
5 was a woman who was exiting; is that right?

6 A. Yes, sir.

7 Q. A white female?

8 A. Yes, sir.

9 Q. And was she detained?

10 A. Yes, sir.

11 Q. And do you remember what her name is or was?

12 A. Not offhand, sir.

13 Q. If you looked at your report, would that refresh
14 your memory?

15 A. Yes, sir.

16 MR. DALY: May I approach the witness?

17 THE COURT: Yes, you may.

18 MR. DALY: Thank you.

19 BY MR. DALY:

20 Q. I'm handing you a copy of your report; is that
21 correct?

22 A. Yes, sir.

23 Yes, sir, the name would be Jacqueline Swanger.

24 I believe that's how you pronounce that.

25 Sam-William-Adam-Nora-George- Edward-Robert. Listed as

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1 Number 5.

2 Q. Swanger?

3 A. Yes, sir.

4 Q. And she was detained; is that correct?

5 A. Briefly by me and then passed to my partners, yes,
6 sir.

7 Q. She was never arrested, right?

8 A. Correct, sir.

9 Q. Same thing with the other people that were there;
10 other than Mr. Bailey, they were not arrested, were they?

11 A. Correct, sir.

12 Q. They were given tickets and released?

13 A. Correct, sir.

14 Q. And do you know if Ms. Swanger was ever handcuffed?

15 A. I do not recall that, sir.

16 Q. What about the other people other than Mr. Bailey?

17 A. I do not recall them being handcuffed either, sir.

18 Q. Is it fair to say that the only person who was
19 handcuffed on the premises was Mr. Bailey?

20 A. I only can speak for him because I actually had
21 contact and I know I cuffed him, but the other individuals
22 I'm not sure about.

23 Q. You don't know?

24 A. No, sir.

25 Q. So once you are in the premises you went down to the

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1 basement, correct?

2 A. Yes, sir.

3 Q. Did you go by yourself?

4 A. At the time I believe I did, sir.

5 Q. And were you in uniform?

6 A. Plain clothes, sir.

7 Q. And did you have your weapon drawn?

8 A. I do not recall my weapon. I know I had a
9 flashlight out so I could see. I don't remember my weapon
10 placement at the time.

11 Q. All right. And when you get down there, you see
12 Mr. Bailey, right?

13 A. Not initially, but yes, sir.

14 Q. Eventually, right?

15 A. Yes, sir.

16 Q. And you knew who he was?

17 A. Yes, sir.

18 Q. And you immediately handcuffed him?

19 A. Yes, sir.

20 Q. And did he give you a false name? Did he say he was
21 somebody else?

22 A. No, sir, he did not.

23 Q. He did not. Did he try to run away from you?

24 A. No, sir.

25 Q. Is this what you call an arrest without incident?

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1 A. Yes, sir.

2 Q. Okay. Meaning that the person that's being arrested
3 is not resisting, right?

4 A. Correct, sir.

5 Q. Not trying to get away, right?

6 A. Correct, sir.

7 Q. And once you handcuffed him then you said that you
8 noticed that there was a bag in his trousers?

9 A. The back of his boxers, yes, sir.

10 Q. And it was just two packs; is that correct?

11 A. Yes, sir.

12 Q. And you removed those; is that right?

13 A. Yes, sir.

14 Q. And did you place them on evidence?

15 A. Yes, sir, I did.

16 Q. And when you searched Mr. Bailey, did you recover
17 any money?

18 A. No, sir, I did not.

19 Q. And in your experience when somebody is dealing
20 drugs they often have money on them, right?

21 A. Sometimes, sir.

22 Q. Often. I didn't say sometimes. I said often,
23 correct?

24 A. I would still say sometimes, sir. I used to work
25 narcotics, too, prior to that, and I would say sometimes.

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1 Q. Okay. More often than not; would you agree with
2 that?

3 A. You could say that sir, yes.

4 Q. All right. And sometimes they have weapons on them,
5 correct?

6 A. Yes, sir.

7 Q. And did Mr. Bailey have a weapon on him?

8 A. No, sir, he did not.

9 Q. Was there a weapon nearby?

10 A. No, sir, no weapons recovered.

11 Q. Do you know what a drug ledger is?

12 A. Yes, sir.

13 Q. What is a drug ledger?

14 A. Pretty much them keeping a tally and just record of
15 currency, transactions and what not. I did not recover
16 any of that either, sir.

17 Q. Okay. So a ledger is a list of people with money
18 usually that is owed to the dealer, correct?

19 A. Yes, sir.

20 Q. No drug ledger taken from Mr. Bailey, right?

21 A. No, sir.

22 Q. Often when people are selling drugs do they have
23 scales to measure their drugs?

24 A. Sometimes, sir.

25 Q. Did you find any scales?

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1 A. No, sir.

2 Q. Now, do you know what the total weight of drugs
3 were, suspected drugs that you found?

4 A. No, sir, I do not.

5 Q. Would you agree that it was a small amount?

6 A. Yes, sir.

7 Q. That could be consistent with personal use, correct?

8 A. I would say the packaging of -- I would say the
9 packaging of it would be consistent with possibly sales,
10 sir.

11 Q. Okay. The packaging could possibly be consistent
12 with sales, correct?

13 A. Yes, sir.

14 Q. But the amount could be consistent with personal
15 use, correct?

16 A. Yes, sir, it's possible.

17 Q. All right. In fact, the amount, even though you
18 don't recall the exact amount that it weighed, you could
19 open your hand and put that suspected cocaine in your hand
20 and if you closed your hand, it wouldn't be visible to the
21 public, correct?

22 A. Correct, sir.

23 Q. That's how small of an amount this was, right?

24 A. Yes, sir.

25 Q. And did you ever weigh it?

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1 **A.** It was weighed, but not by myself, sir.

2 **Q.** Do you know how much it weighed?

3 **A.** No, sir.

4 **Q.** And did you ask Mr. Bailey any questions about those
5 drugs themselves?

6 **A.** I do not recall, sir.

7 **Q.** So you didn't ask him where he got them from, right?

8 **A.** At the time, sir, I do not recall myself asking him
9 that, but we do --

10 **Q.** That's what I'm asking. Excuse me. I'm asking did
11 you ask him questions about these suspected narcotics?

12 **A.** I myself did not, sir, that I recall, but we do an
13 interrogation and advice of rights that we have to do for
14 narcotics cases. I'm not sure if I did that myself
15 without seeing it or one of my coworkers, but one would
16 have been done. I'm just not sure.

17 **Q.** All right. But as far as you know, you didn't ask
18 any of those types of questions, correct?

19 **A.** I didn't, sir, that I recall.

20 **MR. DALY:** Right. I have nothing further.
21 Thank you.

22 **THE COURT:** All right. Thank you, Mr. Daly.

23 **MR. FEINBERG:** Nothing on behalf of
24 Mr. Brown.

25 **THE COURT:** Thank you, Mr. Feinberg.

1 gone looking for either narcotics, money, weapons like you
2 would had you had a search warrant for the house?

3 **A.** No, sir, I did not.

4 **Q.** Do you know in your experience how someone -- not
5 your personal experience -- how somebody uses or ingests
6 crack cocaine?

7 **A.** Yes, sir.

8 **Q.** And how is that?

9 **A.** Crack cocaine, by smoking it through quite possibly
10 a glass pipe or something to that effect.

11 **Q.** And did Mr. Bailey have a crack pipe on him?

12 **A.** No, sir.

13 **Q.** Did you see any crack pipes laying in the area
14 around him in the basement?

15 **A.** No, sir.

16 **Q.** Now, the baggy that you saw, and I can't remember if
17 you testified on direct on this but on cross, did you say
18 that it was sticking out of his --

19 **A.** The top -- yes, sir -- the top part of it, so the
20 twisted part of it, was sticking out of the back side of
21 the boxers, upper part of it, yes, sir.

22 **Q.** And did that attract your attention?

23 **A.** Yes, sir.

24 **Q.** Why did that attract your attention?

25 **A.** Because I believed that the other end of it was

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1 going to be suspected narcotics.

2 Q. Do you know if any of the other people inside of the
3 house that you encountered had baggies sticking out of
4 them?

5 A. No, sir, I do not.

6 Q. And the other people that were located inside of the
7 residence, do you know or did you or somebody get an
8 identification and determine who those people were?

9 A. Yes, sir.

10 Q. Did any of those individuals reside in the City of
11 Detroit?

12 A. As I recall, no, sir.

13 MR. BILKOVIC: Thank you. Nothing further.

14 THE COURT: All right. Thank you
15 Mr. Bilkovic.

16 Mr. Daly?

17 MR. DALY: Yes, thank you.

18 - - -

19 (11:47 a.m.)

20 **RE CROSS-EXAMINATION**

21 **BY MR. DALY:**

22 Q. So, Officer Sweeney, tell the jury how long
23 Mr. Bailey was in the basement before you got down there?

24 A. I do not know, sir.

25 Q. You don't know when he got there, right?

1 A. Correct, sir.

2 Q. Did you determine where he got the suspected drugs
3 from?

4 A. No, sir, I did not.

5 Q. Did you determine when he got them?

6 A. No, sir, I did not.

7 Q. Or who he got them from, you don't know any of that,
8 do you?

9 A. Correct, sir, I do not.

10 Q. And do you have with you an official lab report that
11 says these suspected narcotics were in fact drugs?

12 A. I myself do not, sir. That's something that gets
13 prepared down the line, sir.

14 Q. Okay. You have no knowledge of that one way or the
15 other, right?

16 A. Correct, sir.

17 Q. And all you can tell the jury is that the substance
18 that you saw you suspected to be cocaine, right?

19 A. Yes, sir. In my experience and years --

20 Q. I'm not asking you about your experience. I'm
21 asking you about based on what you saw -- you did no
22 preliminary analysis, right?

23 A. Saw and smelled, sir, yes.

24 Q. No, I asked did you do a field test or preliminary
25 analysis.

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1 **A.** No, sir, I did not.

2 **MR. DALY:** Thank you. Nothing further.

3 **THE COURT:** All right. Thank you, Mr. Daly.
4 Thank you, sir. You can step down.

5 **THE WITNESS:** Thank you.

6 **MS. FINOCCHIARO:** At this time, Your Honor,
7 the government calls Officer Moore.

8 **THE COURT:** Okay.

9 Good morning.

10 **THE WITNESS:** Good morning.

11 **THE COURT:** I'll have you take an oath.
12 Would you raise your right hand, please.

13 - - -

14 **LYNN MOORE,**

15 being first duly sworn to tell the truth, was examined and
16 testified upon his oath as follows:

17 **THE COURT:** All right. Will you take a seat,
18 please.

19 I'm going to have you begin by stating your name
20 and spelling your last name. Push that mike just a little
21 bit away maybe. Actually away. Hopefully -- we have
22 cutting in and out if you're too close.

23 **THE WITNESS:** Okay. My first name is Lynn,
24 L-y-n-n. My last name is Moore, M-o-o-r-e.

25 **THE COURT:** Okay. Thank you, sir.

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1 Q. So you are, fair to say, you are familiar with
2 narcotics investigations and participated in narcotics
3 investigations prior to November 2007, fair to say?

4 A. Yes. As I said, most of my career was in narcotics,
5 yes.

6 Q. Are you familiar with the area of Manning Street in
7 the City of Detroit near Gratiot and Seven Mile?

8 A. Yes.

9 Q. I'm going to take your attention to September 5th,
10 2007 at approximately 4:20 in the afternoon. Were you
11 working that day?

12 A. I was.

13 Q. And do you know who you were working with?

14 A. I was working -- I was assigned to a particular crew
15 at Narcotics Enforcement when I was there. I could name
16 the people if you'd like.

17 Q. That would be fine.

18 **MR. FEINBERG:** I'm sorry, could he speak into
19 the microphone?

20 **MR. BILKOVIC:** Hold on one second. I think
21 Mr. Feinberg is having difficulty hearing him.

22 **THE COURT:** All right. Let's try a little
23 bit closer.

24 **MR. BILKOVIC:** Maybe a little closer than
25 that.

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1 **THE WITNESS:** Better?

2 **THE COURT:** That's better.

3 **BY MR. BILKOVIC:**

4 **Q.** Do you recall who you were working with?

5 **A.** Yes. The OIC, the officer in charge, would be
6 Sergeant Roy Harris. My partners were Officer Michael
7 Panackia, Officer William Morrison, myself, Officer
8 Lashawn Barnett, and I believe there might have been
9 another one or two officers that were with me at that
10 time, but I don't recall the names offhand.

11 **Q.** Were all of these officers in one car or were you in
12 more than one car, if you remember?

13 **A.** Honestly, I don't really remember. Our standard
14 operation is usually we had a raid van and then a scout
15 car would trail us, but honestly from 2007 I don't recall.

16 **Q.** Okay. At around 4:20 in the afternoon were you in
17 the area of 14851 Manning in the City of Detroit?

18 **A.** Yes.

19 **Q.** And did you observe anything that attracted your
20 attention?

21 **A.** Yes.

22 **Q.** What did you observe?

23 **A.** Two individuals standing in front of a vacant
24 location.

25 **Q.** How did you know the location was vacant?

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1 **A.** There was no windows in the location, and if I
2 recall correctly from my report, I had the front door was
3 listed as open and you could see through the dwelling.

4 **Q.** And what did you do after you saw these
5 two individuals -- when you say standing in front, were
6 they in the yard, were they in the street?

7 **A.** I believe they were in the yard, but as I stated,
8 this was a while ago, but they were on the curtilage of
9 that location.

10 **Q.** Officer Moore, obviously it happened a while ago.
11 Do you have independent recollection of specifically what
12 occurred?

13 **A.** Honestly, not, not too much, no.

14 **Q.** Okay. Did you write a report after what occurred?

15 **A.** I did.

16 **Q.** And did you detail the facts of what occurred in
17 your report?

18 **A.** Yes.

19 **Q.** And was that report accurate at the time you made
20 it?

21 **A.** Yes.

22 **Q.** And would you have made it the date that this
23 happened?

24 **A.** Yes, that would have been drafted right after the
25 incident.

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1 Q. And do you have that report with you?

2 A. Yes, sir.

3 MR. BILKOVIC: Your Honor, at this time I
4 would ask for permission for Officer Moore to be able to
5 read his report into the record pursuant to Federal Rule
6 of Evidence 803(5), a recorded recollection.

7 THE COURT: Any objection?

8 All right. You may do so.

9 THE WITNESS: This is my Preliminary
10 Complaint Report.

11 MR. DALY: Hold on, please.

12 MR. H. SCHARG: Your Honor, you have a juror
13 that's raised their hand.

14 THE COURT: Excuse me?

15 A JUROR: Can I go to the bathroom?

16 THE COURT: Yeah, sure.

17 (Recess from 11:55 a.m. to 11:57 a.m.)

18 BY MR. BILKOVIC:

19 Q. Do you have a copy of that report with you?

20 A. Yes, I do.

21 Q. And if you could go down to where it says "A:", do
22 you see that area?

23 A. Yes.

24 Q. Could you start there and just read the contents of
25 your report?

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1 **A.** Yes. Under A is listed the defendants that were at
2 the location at this time.

3 **Q.** And if you could just read those lines verbatim how
4 they appear.

5 **A.** Okay. "Defendant 1: Jeffrey Donnell Adams, Black
6 male, 18, date of birth 3-13-1989, 6'2", 150 pounds, black
7 hair, brown eyes, 14431 Eastwood, Social Security number
8 unknown, wearing a red shirt, dark blue pants, red belt
9 and blue gym shoes."

10 "Defendant 2: Kenyoda Holmes, Black male, 17,
11 date of birth 7-29-1990, 5'4", 140, black hair, brown
12 eyes, of 14795 Novara, Social Security number unknown,
13 wearing black t-shirt, blue dickey shorts, and black Nike
14 boots."

15 **Q.** Continue.

16 **A.** Okay. The next down in the format I have written,
17 "It was a street enforcement activity.

18 Next paragraph. "Writer -- which is myself --
19 was assigned to the arrest team during the above
20 operation. Writer remembers traveling westbound on
21 Manning from Queen. Observed above Defendant 1 -- which
22 is Mr. Adams -- and above Defendant 2 -- Mr. Holmes --
23 standing on the grass in front of the yard of a vacant
24 dwelling." And I have, "dwelling missing the front
25 windows and an open front door, able to see through the

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1 entire house."

2 "Writer then observed above Defendant 2 run in a
3 southbound direction between the houses. Writer then
4 observed Defendant 1 from his right hand discard
5 one orange potato chip bag to the ground. Upon further
6 investigation, P.O. Barnett detained Defendant 1 while
7 writer recovered the orange potato chip bag. Writer then
8 confiscated from the inside of the potato chip bag one
9 plastic wrap containing 16 knotted plastic wraps of
10 cocaine. Writer advised members. Writer made no further
11 confiscations or arrests."

12 Q. Can you read the bottom line?

13 A. And the bottom line on this format, this is the lock
14 seal that the narcotics were placed on, which is "LSF,"
15 which is lock seal folder, "N00202407, which contains
16 one orange Lays potato chip bag containing one plastic
17 wrap containing 16 knotted plastic wraps of cocaine."

18 MR. BILKOVIC: Your Honor, may I approach the
19 witness?

20 THE COURT: Yes.

21 BY MR. BILKOVIC:

22 Q. I'm handing you what's been marked Government's
23 Proposed Exhibit 174. Do you recognize that?

24 A. This is the same -- if I can refer to my report on
25 the exact number for the lock seal.

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1 Q. Yes.

2 A. All of the lock seals are the same. The only
3 difference is the number at the top which sets them apart.

4 Q. Okay. You just read something from your report
5 indicating there was a potato chip bag and there were
6 things inside the potato chip bag containing suspected
7 cocaine?

8 A. Correct, and on my report I have the lock seal
9 number listed, which is the same lock seal I'm holding in
10 my hand with the numbers at the top in the right-hand
11 corner. Also, reviewing this lock seal folder, it has my
12 initials and my handwriting on it.

13 Q. And, from looking at that, does that reassure you
14 that you are looking at the exhibit or the evidence that
15 you recovered that you just read to the jury was contained
16 in your police report including the potato chip bag and
17 the plastic wrap containing the 16 knotted plastic bags of
18 cocaine?

19 A. Yes, sir. You can see in the front the orange
20 potato chip bag plus the cocaine is apparent in the front.

21 Q. Now, you indicated that you were Narcotics
22 Enforcement for approximately 11 years?

23 A. 11, 12 years, yes, sir.

24 Q. The way this was packaged, was it packaged for
25 distribution?

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1 **A.** Sales/distribution, yes. I wouldn't say that was
2 for personal use. That was more for sales.

3 **MR. BILKOVIC:** Your Honor, at this time I
4 would move for admission into evidence of Government's
5 Proposed Exhibit 174.

6 **THE COURT:** Any objection?

7 **MR. DALY:** No.

8 **THE COURT:** All right. Thank you. The Court
9 will receive it.

10 **MR. BILKOVIC:** I have no further questions.

11 **THE COURT:** Okay. Thank you.

12 Any cross-examination?

13 **MR. H. SCHARG:** No questions on behalf of
14 Eugene Fisher.

15 **THE COURT:** Thank you, Mr. Scharg.

16 **MR. DALY:** Your Honor, no questions.

17 **MR. FEINBERG:** No questions.

18 **MR. THEIS:** No questions, Your Honor.

19 **MR. S. SCHARG:** No questions, Your Honor.

20 **THE COURT:** Okay. Thank you. You may step
21 down.

22 **MS. FINOCCHIARO:** At this time, Your Honor,
23 the government calls Officer Panackia.

24 **THE COURT:** Good afternoon.

25 **THE WITNESS:** Good afternoon.

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1 A. Detroit Police Department.

2 Q. In what capacity?

3 A. I'm in the Detective Unit, Investigative Operations.

4 Q. Are you a detective?

5 A. Officer.

6 Q. Okay. How long have you been assigned to the
7 Detective Unit?

8 A. About four years.

9 Q. And how long have you been a police officer with the
10 City of Detroit?

11 A. Almost 22 years.

12 Q. What have been some previous assignments you have
13 had with the City of Detroit Police Department in those 22
14 years?

15 A. I worked patrol for about two years, and I worked
16 Narcotics for about 16 years.

17 Q. Do you recall offhand what years you would have
18 worked Narcotics?

19 A. From '98 to 2014.

20 Q. I want to take your attention to September 5th, 2007
21 at approximately 4:20 in the afternoon. Were you working
22 on that day?

23 A. I was.

24 Q. And were you working with anybody?

25 A. Yes.

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1 Q. Who were you working with?

2 A. Officer Lynn Moore, Sergeant Roy Harris, and other
3 crew members.

4 Q. And while you were on duty that day, did you happen
5 to be in the area of 14815 Manning in the City of Detroit?

6 A. Yes.

7 Q. Why were you in the area?

8 A. I was in the area conducting street enforcement for
9 narcotic activity or any criminal activity.

10 Q. Now, do you decide at the beginning of the shift
11 where you are going to go or are you directed areas to
12 focus on?

13 A. Usually directed by a supervisor.

14 Q. And when you were in the area of 14815 Manning, did
15 you see anything that attracted your attention?

16 A. Yes. There was an individual standing in front of a
17 vacant dwelling. There was actually two individuals
18 standing in front of a vacant dwelling, one of which took
19 off running, and I subsequently apprehended him along with
20 my sergeant in an ally.

21 Q. Now, have you had an opportunity to review your
22 police report before testifying today?

23 A. I did.

24 Q. Do you have independent recollection of the facts
25 that occurred that day?

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1 **A.** I have no independent recollection other than what
2 my report says.

3 **Q.** And so you did author a report in this case?

4 **A.** Yes.

5 **Q.** And did you author it shortly after observing what
6 you observed that day?

7 **A.** Within that same day.

8 **Q.** And when you authored it, would it have been
9 accurate at the time?

10 **A.** Yes.

11 **MR. BILKOVIC:** Your Honor, at this time I
12 would ask for permission for Officer Panackia to be able
13 to read the portion of his report that pertains to this
14 incident under Federal Rule of Evidence 803(5).

15 **THE COURT:** All right. Any objection?

16 **MR. DALY:** No, sir.

17 **THE COURT:** Okay.

18 **BY MR. BILKOVIC:**

19 **Q.** Do you have your report with you?

20 **A.** Yes.

21 **Q.** Could you please refer to it. If you could start
22 down where it says -- there's a letter C with a colon?

23 **A.** Sure.

24 **Q.** If you could just start from there and read down to
25 the bottom?

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1 **A.** "Writer was the assigned to the arrest team during
2 the above operation. Writer remembers traveling westbound
3 on Manning from Queen. Observed Defendant 1 and Defendant
4 2 standing on the grass of the front yard of a vacant
5 dwelling. Dwelling missing all front windows with an open
6 front door, able to see through the entire house.

7 "Writer then observed Defendant 2 look in the
8 direction of the arrest team and run southbound direction
9 between the houses. Writer along with Sergeant Harris
10 gave chase overtaking above Defendant 2 in the ally behind
11 above location.

12 "Writer then conducted a pat-down of Defendant
13 2. Writer at this time felt a lumpy substance in the
14 above defendant right front pants pocket, which writer
15 immediately recognized to be a type of narcotics due to
16 writer's training and experience. Writer then recovered
17 one plastic baggy containing suspected cocaine from the
18 above defendant right front pants pocket. Writer advised
19 members, arrested above Defendant 2 for same. Writer made
20 no further confiscations or arrests."

21 **Q.** Could you read then the bottom line that starts with
22 LSF?

23 **A.** Sure. "One with plastic baggy containing 15 Ziplocs
24 of cocaine and three knotted plastic wraps of cocaine."

25 **Q.** And where would those items have come from?

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1 A. Mr. Kenyoda Holmes.

2 Q. And would that have been the Defendant 2 that you
3 had run after and had apprehended?

4 A. That is.

5 Q. What did you do with those items after
6 confiscating -- well, did you confiscate those items from
7 Mr. Holmes?

8 A. I did.

9 Q. And what did you do with those?

10 A. They were placed in a lock seal folder.

11 Q. I have handed you what's been marked Government's
12 Proposed Exhibit 175. Do you recognize that?

13 A. Yes, I do.

14 Q. And what is that?

15 A. This is a lock seal folder where I placed the
16 suspected cocaine inside of.

17 Q. The items that you talked about, the plastic baggy,
18 the 15 Ziplocs of cocaine and the three knotted plastic
19 wraps of cocaine?

20 A. Yes.

21 Q. Those were placed in there and preserved for
22 evidence?

23 A. That's correct.

24 Q. And those were the items that were recovered from
25 Kenyoda Holmes?

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1 **A.** Yes.

2 **MR. BILKOVIC:** Your Honor, at this time I
3 would move for admission into evidence of Government's
4 Proposed Exhibit 175.

5 **THE COURT:** All right. Any objection?

6 **MR. DALY:** No, sir.

7 **THE COURT:** All right. Thank you. The Court
8 will receive it.

9 **MR. BILKOVIC:** And I have no further
10 questions.

11 **THE COURT:** All right. Thank you.
12 Any cross-examination?

13 **MR. H. SCHARG:** No cross-exam on behalf of
14 Mr. Eugene Fisher.

15 **MR. DALY:** Judge, no questions on behalf of
16 Mr. Bailey.

17 **MR. FEINBERG:** No questions on behalf of
18 Mr. Brown.

19 **MR. THEIS:** None, Your Honor.

20 **MR. S. SCHARG:** No questions on behalf of Mr.
21 Porter.

22 **THE COURT:** All right. Thank you all.
23 You may step down. Thanks.

24 **MS. FINOCCHIARO:** At this time, Your Honor,
25 the government calls Officer Jimenez.

1 THE COURT: Okay.

2 || Good afternoon, sir.

3 **THE WITNESS:** Good afternoon, Your Honor.

4 **THE COURT:** Would you raise your right hand,
5 please.

5 || please.

6 || - - -

7 MOISES JIMENEZ,

8 being first duly sworn to tell the truth, was examined and
9 testified upon his oath as follows:

9 testified upon his oath as follows:

10 **THE COURT:** All right. Take a seat.

11 Why don't you get about maybe a foot away. That's
12 good. If you get too close, it starts cutting out.

```
12      || good.  If you get too close, it starts cutting out.
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13 **THE WITNESS:** Okay.

14 **THE COURT:** All right. Thank you. If you
15 will begin by stating your name and spelling your last
16 name for us.

15 will begin by stating your name and spelling your last

16	name for us.
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17 **THE WITNESS:** My name is Moises Jimenez.

18 Last name is J-i-m-e-n-e-z M-o-i-s-e-s.

19 **THE COURT:** Thank you. You may proceed.

20 **MR. WIGOD:** Thank you, Your Honor.

21

22 (12:10 p.m.)

23 DIRECT EXAMINATION

24 BY MR. WIGOD:

25 Q. Sir, can you tell the jury what it is you do for a

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1 living?

2 A. I'm a Detroit Police Detective.

3 Q. How long have you been a detective with DPD?

4 A. I have been working that section since July of 2000.

5 Q. And how long have you been in law enforcement?

6 A. Law enforcement for Detroit, it's over 24 years and
7 a couple months, but I had prior law enforcement with the
8 military and campus police in Texas.

9 Q. Can you just briefly summarize, we don't need to go
10 into your military, but the 24 years of experience with
11 DPD what sorts of the sections you have been assigned to?

12 A. I was regular patrol for five years. I was plain
13 clothes officer for almost three years. I went to the
14 Homicide Section in July of 2000. I had a 90-day hiatus
15 in the Ninth Precinct and then a 60-day hiatus in the
16 Sixth Precinct.

17 Q. Detective Jimenez, I want to draw your attention to
18 September 18th of 2005. Do you recall an incident that
19 occurred in front of 14777 Tacoma?

20 A. Yes, sir.

21 Q. And that's in the Ninth Precinct?

22 A. Yes, sir.

23 Q. Can you explain -- I'm sorry?

24 A. I'm sorry. The address, the Tacoma address?

25 Q. Yes.

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1 **A.** Yes, it's in the Ninth Precinct right off of
2 Gratiot, south of State Fair.

3 **Q.** Okay. Can you explain for the jury what happened on
4 that day?

5 **A.** Myself and my partner were full uniform, full police
6 car. There was a group of individuals in the middle of
7 the street making the cars go around them so we stopped.
8 As soon as we stopped and as soon as we opened the doors,
9 one person ran. I believe he was wearing a brown shirt
10 and blue jeans, and due to the fact it's just me and my
11 partner and there were still five other people out there,
12 I got out and I ordered everybody to get on the ground.

13 **Q.** All right. So you and your partner -- who was your
14 partner back then?

15 **A.** I can't remember, sir. This was in 2005.

16 **Q.** Okay. Do you have your report with you?

17 **A.** Yes.

18 **Q.** Would that refresh your memory?

19 **A.** Yes, please. Police Officer Howell.

20 **Q.** Now, you and Officer Howell would have been in a
21 vehicle?

22 **A.** Yes.

23 **Q.** And you mentioned that you saw several individuals
24 in the middle of the street?

25 **A.** Yeah, there was like five or six individuals.

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1 Q. This would be in the middle of the street basically
2 in front of the 14777 Tacoma address?

3 A. Yes, sir.

4 Q. And could you tell what they were doing?

5 A. They were just scattered around in front of that
6 location, and because the vehicles in front of me had to
7 go around the individuals, we stopped.

8 Q. Okay. And approximately how many people were out
9 there?

10 A. At least six.

11 Q. You said at some point in time one of the
12 individuals you thought with a brown shirt ran?

13 A. Yes.

14 Q. All right. Did you notice anything unusual about
15 that person or that gave you cause for concern?

16 A. He ran as though -- he ran trying -- putting his
17 hand on his hip line as though armed, so therefore that
18 brought me to tell -- I ordered everybody on the ground.

19 Q. Okay. So the person who ran you thought might have
20 a firearm on them?

21 A. Yes, sir.

22 Q. Did you think that the person who ran had a firearm
23 on him?

24 A. Yes.

25 Q. And that's what caused you -- but the other people

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1 at that point in time, you don't know whether they are
2 armed or not armed?

3 A. I didn't know if they were armed or not.

4 Q. Okay. So in an abundance of caution you had them --
5 you detained them?

6 A. Yes.

7 Q. Okay. Explain what happened next.

8 A. We had placed cuffs on Mr. Robert Martin Brown, and
9 when my partner tried to put him in the car cuffed --

10 Q. Hold on. There you go.

11 A. When my partner had cuffed him and trying to place
12 him in the car --

13 Q. Him being?

14 A. Mr. Brown. He started fighting.

15 Q. Mr. Brown did?

16 A. Correct. So I maced him.

17 Q. When you say Mr. Brown started fighting, can you
18 give more detail, what did he do?

19 A. When my partner was placing him into the car, he
20 started pushing away from the car with his body even
21 though he was cuffed, and due to the fact that we still
22 had four more people on the ground, I went up and I maced
23 Mr. Brown.

24 Q. Okay. You were concerned for your safety?

25 A. Yes.

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1 Q. The safety of your fellow officer?

2 A. Yes, sir.

3 Q. Did you eventually get Mr. Brown into the patrol
4 cruiser?

5 A. Yes.

6 Q. Did you take any action to help Mr. Brown recover
7 from being maced?

8 A. Yes, we rode, we rode to the precinct with the
9 windows rolled down.

10 Q. Now, were you at some point in time able to get the
11 names of the other individuals who were blocking traffic
12 who were with Mr. Brown?

13 A. Yes, sir, because we ticketed everybody.

14 Q. Okay. Can you give us some of the names of the
15 other individuals who were with Mr. Brown?

16 A. Mr. Powell, Mr. Lovejoy.

17 Q. Hold on. If you could give first names as well.

18 A. I would have to go through my report --

19 Q. That's fine.

20 A. -- if you don't mind. Christopher Owens, John
21 Powell, Robert Murphy, Anthony Lovejoy. These folks were
22 issued ordinances for loitering at the location and
23 released.

24 Q. Okay. The individual who ran, he was not caught?
25 He was a male?

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1 A. Yes.

2 Q. No one gave chase or was able to find that person?

3 A. No. No, sir.

4 Q. Okay. At some point in time was an address for
5 Mr. Brown obtained?

6 A. Yes, sir.

7 Q. And what address was provided by Mr. Brown?

8 A. 14561 Manning.

9 Q. That's 14561 Manning?

10 A. Yes, sir.

11 Q. In the City of Detroit?

12 A. Yes, sir.

13 MR. WIGOD: Your Honor, I don't have any
14 further questions of the witness.

15 THE COURT: Okay. Thank you, Mr. Wigod.

16 MR. H. SCHARG: No questions on behalf of
17 Eugene Fisher.

18 THE COURT: Okay. Thank you.

19 MR. DALY: We have no questions. Thank you.

20 MR. FEINBERG: Just one second, Your Honor.

21 - - -

22 (12:17 p.m.)

23 CROSS-EXAMINATION

24 BY MR. FEINBERG:

25 Q. Detective Jimenez, you saw approximately six people

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1 in the street or on the sidewalk?

2 A. At least six people on the street.

3 Q. Will you look at your report and see whether or not
4 they were obstructing cars driving or pedestrians walking?

5 A. Pedestrians.

6 Q. Sidewalk, right?

7 A. Yes, sir.

8 Q. Okay. Who was driving the vehicle that you were in?

9 A. It had to be Police Officer Howell.

10 Q. I'm sorry?

11 A. It would have to be my partner, sir, Police Officer
12 Howell.

13 Q. So as you were driving on Tacoma you saw six people
14 on the sidewalk congregating; is that correct?

15 A. No, sir, that's not what I said. I said I saw at
16 least six people in front of that location on the street.
17 That's what I said.

18 Q. On the sidewalk. On the sidewalk, right?

19 A. No, sir. I said on the street.

20 Q. But you said in your report it says sidewalk.

21 A. Yes, sir.

22 Q. Okay. So you were mistaken whether or not they were
23 in the street because they were on the sidewalk?

24 A. No, sir, I said they were on the street.

25 Q. But your report says sidewalk?

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1 A. The report does say sidewalk.

2 Q. Okay. You prepared the report 13 years ago?

3 A. Yes, sir.

4 Q. Okay. And you prepared the report shortly after the
5 incident?

6 A. Yes, sir.

7 Q. So your memory would have been better then than it
8 is now; is that correct?

9 A. That is correct.

10 Q. Okay. So if your report says you saw them on the
11 sidewalk, that would be correct?

12 A. That's correct.

13 Q. Okay. How fast was your car going on Tacoma?

14 A. I don't know, I wasn't driving, but it was going
15 slow enough for him to stop and me jump out.

16 Q. Okay. During the period of time that you were in
17 the car approaching this group of people, how many
18 pedestrians were on the sidewalk crossing where the people
19 were?

20 A. I don't recall.

21 Q. Do you recall any?

22 A. No, I do not. I don't recall.

23 Q. Your report does not say that you saw any
24 pedestrians that were being blocked on the sidewalk by
25 these people, right?

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1 A. Can you repeat that question, sir?

2 Q. There's nothing in your report that says that you
3 saw pedestrians being blocked by these people; is that
4 correct?

5 A. No, it does say gathered in front of 14777 Tacoma
6 impeding the flow of pedestrian traffic on the sidewalk.

7 Q. How many pedestrians were impeded by these people?

8 A. I don't know, sir. I don't recall.

9 Q. Do you recall any?

10 A. Sir, I don't recall if there was one, ten, fifteen.
11 I don't recall.

12 Q. Or none?

13 A. I don't recall.

14 Q. Okay. So let's assume that no pedestrians were
15 impeded. What were these people doing wrong other than
16 hanging out on a sidewalk, on a city sidewalk at -- what
17 time was this?

18 A. 7:45 p.m.

19 Q. It was still light out, wasn't it?

20 A. Yes, because it's summer.

21 Q. I'm sorry?

22 A. Yes, because it's summer.

23 Q. Right. So let's assume that there were no
24 pedestrians that were impeding. Why did you stop other
25 than six -- oh, let me just ask you this. Were all of

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1 these Black males?

2 A. Yes.

3 Q. Okay. Other than six Black males standing on the
4 sidewalk when it was light out in September, why did you
5 approach them?

6 A. Because not all of these individuals were on the
7 sidewalk.

8 Q. I see. Where in your report does it say that any of
9 the individuals were anyplace other than the sidewalk?

10 A. In the second sentence on the first paragraph where
11 it says, "Observed several vehicles slow or vary their
12 course of travel in front of the location above," which is
13 14777 Tacoma.

14 Q. And who were the persons that were in the street
15 blocking the traffic?

16 A. I do not know exactly who was standing where. The
17 only thing I do know is that one ran and five stayed.

18 Q. Where was Mr. Brown, on the sidewalk or in the
19 street?

20 A. I don't recall, sir. I just, like I said, I know it
21 was six at least, and these are the individuals that were
22 detained.

23 Q. So if Mr. Brown was on the sidewalk, why would you
24 order him to the ground because other people were in the
25 street and one person ran?

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1 A. Because he ran as though he was armed.

2 Q. I understand. That was the one person who ran?

3 A. Yes, sir.

4 Q. None of the other five gave you any indication that
5 they were armed; isn't that correct?

6 A. No.

7 Q. Okay. No, that's not correct?

8 A. I don't know if they were armed.

9 Q. I'm saying no one gave you any indication that they
10 were armed; is that correct?

11 A. I'll say okay.

12 Q. Okay meaning yes?

13 A. Yes.

14 Q. Okay. Mr. Brown didn't give you any indication he
15 was armed, did he?

16 A. No, but it was Mr. Brown that gave us the most
17 problems. That's why he got sprayed.

18 Q. I understand. He's the only one who exercised his
19 right to resist an unlawful arrest; isn't that correct?

20 MR. WIGOD: I'll object, Your Honor.
21 Argumentative.

22 THE COURT: Objection sustained.

23 BY MR. FEINBERG:

24 Q. Okay. Do you know if a person has a right to resist
25 an unlawful arrest?

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1 **MR. WIGOD:** Again, Your Honor, I would
2 object. It's not relevant and it's argumentative.

3 **MR. FEINBERG:** Of course it's relevant.
4 Mr. Brown did nothing wrong to be handcuffed, put in a
5 scout car and to be maced. You are -- as the Court knows,
6 a person has a right to resist an unlawful arrest. I'm
7 asking about the nature of the unlawful arrest of
8 Mr. Brown and the right for him to resist.

9 **THE COURT:** Okay.

10 **MR. WIGOD:** One, I don't think that's a
11 correct statement of the law, and two, this officer did
12 nothing wrong so I don't see the relevance of the
13 question.

14 **MR. FEINBERG:** He may not, but I certainly
15 do, Your Honor, and I can certainly on behalf of
16 representing Mr. Brown, who was in fact unlawfully
17 arrested for resisting an unlawful arrest, I can pursue
18 that.

19 **THE COURT:** I think the question was
20 argumentative, but I'll hear the question again.

21 **MR. FEINBERG:** Yes.

22 **BY MR. FEINBERG:**

23 **Q.** Are you aware that a person has a right to resist an
24 unlawful arrest?

25 **A.** Yes.

1 Q. What was Mr. Brown originally ordered to the ground
2 for and later handcuffed and arrested?

3 A. He was ordered to the ground for our safety. He was
4 arrested for his warrants that he himself said he had.

5 Q. You say that he was ordered to the ground for your
6 safety. What did he do that caused you to be concerned
7 about your safety?

8 A. That they were all loitering in front of that
9 location.

10 Q. I'm sorry?

11 A. That they were all loitering in front of that
12 location. We were going to stop and address the
13 situation. One of his friends or somebody appointed to
14 the group ran away as though armed. I ordered everybody
15 on the ground. I asked Mr. Brown if he was on probation
16 or parole. He answered the question. I asked him if he
17 had any warrants. He said yes, I do. We cuffed him. We
18 tried to put him in the car. That's when Mr. Brown --

19 Q. How do you know that the person that ran was a
20 friend or an associate of Mr. Brown?

21 A. Because they were all together.

22 Q. I see. So we are all together. Does that mean that
23 we all have to be associates and friends?

24 A. No, but I'm pretty sure they all know each other.

25 Q. Have you ever been in a group of people that you did

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1 not know and that you were talking, but you weren't
2 associates?

3 A. No, sir.

4 Q. Never?

5 A. No.

6 Q. Oh, okay. Did you ask him about the warrants before
7 or after you ordered him to the ground and handcuffed him?

8 A. After.

9 Q. So when you ordered him to the ground, you didn't
10 order him to the ground and cuffed because he told you he
11 had a misdemeanor warrant; isn't that correct?

12 A. Well, I ordered him to the ground --

13 Q. Yeah.

14 A. When I asked him the array of questions that I did
15 and he had the warrants, that's when he got cuffed.

16 Q. But you ordered him to the ground before you
17 questioned him, right?

18 A. Yes.

19 Q. Okay. And you ordered him to the ground to protect
20 yourself?

21 A. Yes.

22 Q. Was he armed?

23 A. No, he was not.

24 Q. Is it a crime to stand on the sidewalk in front of a
25 house and talk?

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1 A. That question in general?

2 Q. Yes.

3 A. No, it's not a crime.

4 Q. So you arrested them for -- you ordered them to the
5 ground and arrested them for loitering for a crime that
6 didn't exist?

7 A. No. Yes, I detained them because they were
8 loitering in front of the location in traffic and
9 sidewalk. That prompted me to have the right to stop and
10 detain them, identify them and do the proper sequence. It
11 would have been a loitering ticket for all five.

12 Q. Detective Jimenez, Mr. Brown -- you do not recall
13 whether or not Mr. Brown was just standing on the sidewalk
14 or in the street; is that correct?

15 A. That's correct.

16 Q. Okay. So if he wasn't in the street causing
17 vehicles to go around, all he was doing was standing on
18 the sidewalk, on a public sidewalk in front of a house,
19 correct?

20 A. That -- if it was -- without the totality of the
21 circumstances, you are correct, that is not a crime.

22 Q. The totality of the circumstances is someone ran
23 away that you had no idea what that person's relationship
24 with Mr. Brown?

25 A. That is correct.

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1 Q. Okay. But you still ordered him to the ground?

2 A. Yes, sir, but the person running away is not the
3 only totality of the circumstances that put Mr. Brown on
4 the floor.

5 Q. Before you ordered him to the ground, other than
6 standing on the sidewalk what was his participation in the
7 totality of the circumstances?

8 A. Well, you keep saying that Mr. Brown was on the
9 street. I said I don't remember if Mr. Brown was on the
10 sidewalk or on the street.

11 Q. I understand, but if you don't remember, you have to
12 assume --

13 A. No, sir.

14 Q. No, okay. Detective Jimenez, apparently you have
15 your own agenda for this situation, and I don't think
16 there's any further questions that the jury could even
17 consider what you have to say.

18 MR. FEINBERG: No further questions.

19 MR. WIGOD: Is that a question, Your Honor?

20 THE COURT: No. If that's an objection, it's
21 granted.

22 MR. WIGOD: That's an objection, Your Honor.

23 THE COURT: It's granted.

24 - - -

25

(12:33 p.m.)

REDIRECT EXAMINATION

BY MR. WIGOD:

Q. Detective, just a few follow-up questions, if I may.

Had there been complaints of narcotic sales in that area?

A. Yes, sir.

Q. So you were aware that that area was a high drug trafficking area?

A. Yes.

Q. Okay. And you saw several individuals in front of a house loitering?

A. Yes.

MR. FEINBERG: Objection. That's a legal conclusion, loitering. Standing.

THE COURT: Go ahead.

BY MR. WIGOD:

Q. Mr. Brown resisted after he was arrested?

A. Yes. After he was cuffed, that's when he started fighting.

Q. Being placed in the car, and at that point in time he was arrested for having outstanding arrest warrants, correct?

A. Yes.

Q. Okay. And the other individuals at the scene, Mr. Lovejoy, Mr. Murphy and the others, they were

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1 released?

2 A. They were ticketed and released, yes.

3 Q. So they went on their way?

4 A. Yes.

5 Q. But Mr. Brown had an arrest warrant so you are
6 obligated to take him into custody?

7 A. Yes.

8 Q. And it was when you were placing him into the car or
9 your partner was placing him into the car that Mr. Brown
10 resisted that arrest?

11 A. Yes.

12 MR. WIGOD: Okay. Thank you, sir.

13 THE COURT: All right. Thank you.

14 MR. FEINBERG: I have a few more follow-up
15 questions, Your Honor.

16 THE COURT: You have what?

17 MR. FEINBERG: I have a couple of follow-up
18 questions.

19 THE COURT: Okay.

20 - - -

21 (12:35 p.m.)

22 **RE CROSS-EXAMINATION**

23 **BY MR. FEINBERG:**

24 Q. In relation to September 18, 2005, when was the last
25 complaint that you were -- specific complaint you were

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1 aware of on Tacoma?

2 A. Are you talking about back then or now?

3 Q. I'm sorry?

4 A. Are you talking about back then?

5 Q. Yes, of course.

6 A. They had numerous complaints. I was new to the
7 precinct, sir.

8 Q. You don't know when the last complaint was --

9 A. No, sir, I don't.

10 Q. -- and where it was and the nature of the complaint?

11 A. No, I know the nature of the complaint was numerous
12 narcotics complaints alongside that street on Tacoma.

13 Q. How do you know this?

14 A. Because of the narcotics complaints that come into
15 the precinct.

16 Q. How do you know that it had to do with Tacoma
17 Street? Did you see the actual complaint?

18 A. The complaints come in --

19 Q. I'm asking you did you actually see the complaint?

20 A. Are you talking about the report?

21 Q. Yes.

22 A. Yes, they come in reports and briefings about
23 numerous complaints where they call the 1-800-dope or
24 whatever that number is, and then they generate the
25 report, the report goes to the proper precincts, and then

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1 that's when we read them.

2 Q. So the question I'm asking you, when in relation to
3 September 8th, 2005, when was the last complaint called in
4 on? Do you know?

5 A. No, sir, I did not print it out.

6 Q. Okay. It could have been about barking dogs; isn't
7 that correct?

8 A. No, sir.

9 Q. You don't know what the nature, specific nature of
10 any complaint on September 8th, 2005 was; is that correct?

11 A. No, that is not correct. The nature was numerous
12 complaints of narcotic sales in the area.

13 Q. And I'm asking was that on or around September 8th,
14 2005 of your own knowledge and recollection right now.
15 Any recollection of any specific complaints --

16 A. No, sir, not any, no, not without printing the
17 reports or doing some research.

18 Q. And you don't have any of those reports?

19 A. No, sir.

20 Q. Okay. Who transported Mr. Brown into custody, into
21 the precinct?

22 (Loud noise interruption.)

23 **BY MR. FEINBERG:**

24 Q. Who transported Mr. Brown into the precinct?

25 A. We did.

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1 Q. Okay. And did you do any check to see whether or
2 not there were any warrants for Mr. Brown?

3 A. Yes. For the numbers, yes.

4 Q. I'm sorry?

5 A. Yes, we did.

6 Q. And what was the warrant for?

7 A. He had a misdemeanor warrant for \$50, 36th District
8 Court. Do you want the OC on the record, sir, which would
9 be the warrant number?

10 Q. No, no. This is what he told you?

11 A. No, he said he had some warrants. That's what he
12 told me.

13 Q. Again, after you illegally ordered him to the
14 ground; isn't that correct?

15 MR. WIGOD: I'm going to object as
16 argumentative, Your Honor.

17 THE COURT: The Court will sustain the
18 objection. Thank you, and you --

19 MR. FEINBERG: Yes, sir.

20 BY MR. FEINBERG:

21 Q. Again, these were all Black males, correct?

22 MR. WIGOD: Objection, asked and answered and
23 relevance.

24 THE COURT: I'll allow the question. I have
25 heard the answer before.

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1 BY MR. FEINBERG:

2 Q. Was your partner White or Black?

3 MR. WIGOD: Objection, relevance, Your Honor.

4 MR. FEINBERG: I'm going into racial
5 profiling, Your Honor.

6 THE COURT: The Court will sustain the
7 objection.

8 Any re-redirect?

9 MR. WIGOD: No, Your Honor.

10 THE COURT: All right. Thank you.
11 You may step down, sir. Thank you.

12 THE WITNESS: Thank you, Your Honor.

13 MS. FINOCCHIARO: At this time, Your Honor,
14 the government calls Johnny Jones.

15 THE COURT: Okay.

16 MR. FEINBERG: Your Honor, may I approach the
17 bench for one second?

18 THE COURT: Okay.

19 (The following sidebar conference was
20 held:)

21 THE COURT: All right. Mr. Feinberg?

22 MR. FEINBERG: Yes. Mr. Jones is a very key
23 witness in this case. We have approximately 15 minutes
24 left. I don't expect that the prosecution and the defense
25 will be able to finish their examination today. I would

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1 hate to have to come back tomorrow in the middle of any
2 examination. I would ask that since there are other
3 witnesses out in the hall that can be called that
4 Mr. Jones wait until tomorrow. I mean, that's -- it's an
5 important case and has nothing to do with the drugs and
6 whatever that has been previously testified to, and
7 there's many other Detroit police officers who are on the
8 witness list, who I was given a list of, who are going to
9 be called. So I would ask that Mr. Jones be held off
10 until tomorrow.

11 **THE COURT:** Ms. Finocchiaro?

12 **MS. FINOCCHIARO:** Your Honor, the government
13 controls the order in which we call witnesses, and I would
14 disagree with counsel that it doesn't have anything to do
15 with what's been talked about. I think it's going to and
16 it's going to be relevant to that, and he's here, he's
17 present and he's ready to go and so I would ask that he be
18 allowed to start his testimony.

19 **THE COURT:** If he's going to consume a fair
20 amount of time anyway, I would think you would rather have
21 the information elicited today to consider what your
22 cross-examination is going to be tomorrow.

23 **MR. FEINBERG:** Well, it's a two-pronged
24 issue. One is to let the jurors hear this and then go
25 home and thinking about what he testified to and then me

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1 cross-examining tomorrow or put it all together, which is
2 what I prefer, so that the jury doesn't have only part of
3 the story when they go home.

4 And we're not talking about a witness who is
5 capable of testifying for one, two, three, four days.
6 We're talking about a witness who probably is an hour-long
7 witness.

8 And I know that the government generally controls
9 the number of the witnesses and when they are called, but
10 not when it's prejudicial to the defense and they have an
11 alternative.

12 **THE COURT:** I just don't get the prejudice
13 part of it so I'll allow the witness.

14 **MS. FINOCCHIARO:** Also, I just want to put on
15 the record, too, I asked the defendants to put their name
16 tags down and I covered the board because it's a civilian
17 in case there's any ID questions and so that's why their
18 name tags are down.

19 **THE COURT:** Oh, okay.

20 **MS. FINOCCHIARO:** If that's okay with the
21 Court.

22 **THE COURT:** Okay.

23 **MR. FEINBERG:** I would ask, Your Honor, that
24 when the prosecution is done on their direct that even if
25 there's a few minutes left that we wait until tomorrow for

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1 me to start my cross.

2 **THE COURT:** Yes.

3 **MR. FEINBERG:** Thank you.

4 (End of discussion at sidebar.)

5 **THE COURT:** All right. Do you have your next
6 witness?

7 **MS. FINOCCHIARO:** Yes. Mr. Jones is on the
8 stand, Your Honor.

9 **THE COURT:** Mr. Jones.

10 **THE WITNESS:** Yes, sir.

11 **THE COURT:** Will you raise your right hand,
12 sir.

13 - - -

14 **JOHNNY JONES,**

15 being first duly sworn to tell the truth, was examined and
16 testified upon his oath as follows:

17 **THE COURT:** All right. We're going to have
18 you begin by stating your name and spelling your -- well,
19 Jones, I think we can all figure that one out, right? But
20 in the mean time if you would pull that microphone just a
21 little bit closer to you. That's almost too close. If it
22 gets too close, it cuts out. If it's too far, we can't
23 hear you. It looks like it's about right. Thank you.

24 Mr. Jones, would you state your name for the
25 record.

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1 Go ahead.

2 **BY MS. FINOCCHIARO:**

3 Q. And are you married?

4 A. Separated.

5 Q. And do you have any kids?

6 A. Yes.

7 Q. How many kids do you have?

8 A. Seven.

9 Q. Boys or girls?

10 A. Both.

11 Q. How many boys, how many girls?

12 A. Three boys and four girls.

13 Q. Now, you said you grew up in Detroit; is that right?

14 A. Yes.

15 Q. Okay. What area of Detroit did you grow up in?

16 A. Southeast side of Detroit, which is by Belle Isle.

17 Q. Which is where, I'm sorry?

18 A. By Belle Isle.

19 Q. And what kind of neighborhood?

20 **MR. FEINBERG:** I'm sorry, Your Honor, not to
21 belabor, could the witness please speak into the mike?

22 **THE WITNESS:** By Belle Isle.

23 **BY MS. FINOCCHIARO:**

24 Q. And what was the neighborhood like that you grew up
25 in?

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1 **A.** That neighborhood was very rough as well as the
2 neighborhood I moved into afterwards, you know, as we got
3 older, which was Warren and Shoemaker area.

4 **MR. FEINBERG:** Your Honor, I still can't hear
5 very well.

6 **MS. FINOCCHIARO:** Your Honor, could we try
7 the handheld mike maybe?

8 **THE COURT:** Maybe that's the answer.

9 Sounds good.

10 **BY MS. FINOCCHIARO:**

11 **Q.** So, I'm sorry, if we could just start over again.
12 What was the area like that you grew up in?

13 **A.** It was rough.

14 **Q.** What do you mean by "rough"?

15 **A.** Drug dealers, pimps, things of that sort.

16 **Q.** And you said the neighborhood that you moved into
17 was also rough; is that right?

18 **A.** Yes.

19 **Q.** Okay. And what neighborhood, what area of Detroit
20 was that?

21 **A.** Warren and Shoemaker area.

22 **Q.** So you said there was drugs and pimps. Was there
23 gang activity in the areas you grew up in?

24 **A.** Yes, off of east Warren it was.

25 **Q.** And when you grew up in that environment, did you

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1 engage in any of that activity?

2 A. Yes, for a second.

3 Q. And can you explain what you mean by that?

4 A. I was less than 13 years old and I started selling
5 dope, and I decided to stop and change.

6 Q. Why did you decide to stop and change?

7 A. To make a better life for myself as well as my
8 mother and my grandmother, family.

9 Q. So did you graduate school?

10 A. Yes.

11 Q. And what did you do after graduation?

12 A. Worked in construction. We rehab houses as a family
13 business as well. Just basically work.

14 Q. And do you have any military experience?

15 A. Some, yes.

16 Q. What branch of the military do you have experience
17 with?

18 A. Navy.

19 Q. How long were you in the Navy?

20 A. I went through basic training, and I was sent home
21 because I got injured.

22 Q. Do you know approximately how long that was?

23 A. Probably a little bit over a month or so.

24 Q. So at some point did you move to the east side of
25 Detroit?

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1 A. Yes.

2 Q. And what brought you to the east side?

3 A. The wife I was with at the time, she asked me to --
4 we looked at a house as we was visiting a friend, which is
5 down the street, and we saw the house. She liked it from
6 the outside.

7 Q. Do you remember what street that was on?

8 A. Manning.

9 Q. So your wife liked the house and so what steps did
10 you take to move in?

11 A. The person that was selling the house, she -- it was
12 a couple. We started talking with, conversating with them
13 and then we found out that they needed rehabbing. So what
14 me and my uncle did was we talked to them and we started
15 doing favors for them as far as working with them on their
16 houses, and then we bought the house from them.

17 Q. So your wife and did your family move with you into
18 the house?

19 A. Yes.

20 Q. And approximately what time period was this?

21 A. It was during the summer.

22 Q. Do you know what year approximately?

23 A. Not offhand I don't.

24 Q. Do you know how long that you lived on Manning?

25 A. It was at least two years.

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1 Q. And do you recall when it was that you actually
2 moved out of the area?

3 A. Probably around the summer.

4 Q. Do you remember what year that would have been?

5 A. Not offhand I don't.

6 Q. Well, let me ask you this. Your family moved with
7 you. How old were your kids at the time you lived there?

8 A. We had an unborn son that was later born, and the
9 youngest girl was two years old.

10 Q. And how old is your daughter now?

11 A. 15.

12 Q. So was that approximately 13 years ago?

13 A. Yes.

14 Q. So you said you did some rehab on the house. Did
15 you move in immediately to the house on Manning?

16 A. No. Basically I had to convince my wife, first of
17 all, when she seen the inside of the house, she was not
18 happy so I told her close her eyes and picture how she
19 wanted her house and that's how I was going to do it for
20 her and that's what we did. It probably took us probably
21 about no more than a month to move in.

22 Q. And what kind of a house was it?

23 A. A single home.

24 Q. Can you describe the area that you lived in, Manning
25 Street?

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1 **A.** When I first went over there, it was very quiet
2 every time we went over there. Then after so long that's
3 when it started getting kind of rowdy.

4 **Q.** And when you say "rowdy," what do you mean by that?

5 **A.** For instance, we had an individual when we first
6 moved in, he came to knocking on the door approximately
7 between one and three o'clock in the morning asking for
8 drugs. I went to the door, and by being a picture window
9 in the door, I stood off to the side and I asked who was
10 it. He asked for a five-dollar rock. I told him to get
11 away from my home, we don't sell that here. And he kept
12 saying ain't this the place where -- I said, no, it's not.
13 He continued to keep persisting to ask for a rock, and I
14 told him, I said, "Well, I have a 12 gauge for you if you
15 want that." And he said, "No." And I said, "So leave my
16 home," and that's what he did.

17 **Q.** Now, was this the only time that you encountered
18 drug activity near your home?

19 **A.** No.

20 **Q.** Can you describe some other times?

21 **A.** There was an instance where one of my kids was --
22 well, actually all of them were sitting at the table in
23 the kitchen eating, and they look over and, for lack of a
24 better term, a female was providing a service to someone
25 on the side of the house and they were asked to move.

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1 There was another instance where Jonathan Murphy
2 was outside the home selling, and I asked him to leave and
3 he threatened me and I told him do what he had to do.

4 Q. So let's stop there for a second. Let's do the
5 first instance. You said a female was servicing a male.
6 Do you mean sexually?

7 A. Yes.

8 Q. Okay. And who had to ask them to leave?

9 A. My wife did.

10 Q. Now, you said there was an instance when Jonathan
11 Murphy sold drugs near your home; is that right?

12 A. Yes.

13 Q. Okay. So what did you observe him actually do?

14 A. He was sitting at the front of the house. I came
15 out, and he was handing someone in the car something, you
16 know, product, and they pulled off and he continued to sit
17 there and in the process I asked him, you know, do not
18 sell that here, you know, and I appreciate it.

19 He told me that it was nothing that I could do
20 about it or the police could do about it and he going to
21 do what he want to do. And I said, "Well, you do what you
22 want to do, and I'm going to do what I have to."

23 And as I turned around, he started making
24 threats. He looked up the street. He seen three guys
25 walking up. And he was like, "I'll beat your ass. Me,

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1 that's who."

2 And like I turned around and looked at him once
3 I got to the porch and I said, "Well, like I told you
4 before, do what you have to do and I'm going to do what I
5 have to do."

6 Q. And what happened?

7 A. He just kept talking, and I wound up walking in the
8 house.

9 Q. Now, you called him by his name, Jonathan Murphy.
10 How did you know his name?

11 A. I learned that after he had hit me in the head with
12 a .357.

13 MR. FEINBERG: I'm sorry, I didn't hear that.

14 BY MS. FINOCCHIARO:

15 Q. Could you repeat that?

16 A. He struck me in the head with a .357 chrome
17 revolver.

18 Q. So along with the -- well, with the instance that
19 you just talked about was there other activity, drug
20 activity around your home that you recall?

21 A. Yes. Robert Brown and a couple of other guys was
22 selling. I went to Robert, which I called him Rob, and I
23 asked him to stop selling and he agreed at the time when
24 we first moved over there, and he stopped pretty much all
25 the guys from pretty much selling it on that corner.

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1 Q. Okay. So you said Robert Brown, who you call Rob,
2 that's who you are talking about, right?

3 A. Yes.

4 Q. You said he was with others. Do you remember how
5 many other people he was with?

6 A. It was just a bunch of guys in the neighborhood. I
7 couldn't really offhand say how many it was.

8 Q. And did you actually see him sell?

9 A. Him personally, no, I can't say I did.

10 MR. FEINBERG: I'm sorry, I didn't hear that
11 either.

12 THE WITNESS: Him personally no, I couldn't
13 say I did.

14 BY MS. FINOCCHIARO:

15 Q. But did the others that he was with sell?

16 A. Yes.

17 Q. And so in your experience watching this drug
18 activity would there be multiple working together or how
19 would it be?

20 A. Yes, it was multiple people.

21 Q. And can you describe what you would see in terms of
22 multiple people?

23 A. Well, Tacoma, they would have someone on Tacoma,
24 have someone on Manning, have someone on Liberal, on both
25 sides of the street just in case the police came, and they

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1 either used cell phones or some type of communication with
2 each other to let each other know they was coming. And
3 then the person, whoever had the drugs, they disappeared.

4 Q. Now, so you said after you encountered this with
5 Rob, you asked him to stop; is that right?

6 A. Yes.

7 Q. And what did he do in return?

8 A. He complied. He asked -- well, I ain't going to say
9 asked, he told them to pretty much stop.

10 Q. So he told the others that he was with?

11 A. Yes.

12 Q. And so did the activity stop around your house?

13 A. As far as the rest of them, but the only person that
14 wouldn't stop was Jonathan Murphy.

15 Q. So I just want to stop there for one second. In
16 terms of drug activity, did you see any gang activity
17 around where you lived?

18 A. There was gang signs on the side of my garage and
19 other instances, yes.

20 Q. Okay. And do you recall any of the gangs that you
21 encountered?

22 A. The Bloods.

23 Q. Did they go by any other names?

24 A. As far as I know, they would call themselves the
25 Bloods, Seven Mile Bloods.

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1 **Q.** And do you know any members of the Seven Mile
2 Bloods?

3 **A.** Well, Corey, which called himself Sonny and C
4 Murder, he told me that he was a Blood as well as another
5 guy named Ryder.

6 **Q.** Ryder. And did you know anyone else to associate
7 with the Bloods?

8 **A.** Well, pretty much all of them hung together.

9 **MR. FEINBERG:** Objection. If he's guessing,
10 that's one thing. If he absolutely knows, then he can
11 testify to that. We don't know the basis -- basically I'm
12 asking for foundation of why he knew or who he knew was a
13 Seven Mile Blood.

14 **MS. FINOCCHIARO:** I can ask some more
15 foundational questions.

16 **THE COURT:** All right. Go ahead.

17 **BY MS. FINOCCHIARO:**

18 **Q.** So you already talked about C Murder and Ryder told
19 you; is that right?

20 **A.** Yes.

21 **Q.** Based on your being in the area and witnessing what
22 you witnessed, how did you get other information that
23 there was other people associating with the Bloods?

24 **A.** They came to my house. My wife owned a candy store,
25 and in the process she invited people there to buy candy

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1 and that's how we became friends or close to some of them.
2 And like with Rob, Rob would come over to the house, come
3 inside the house. We fed Rob. Corey came over and things
4 of that sort.

5 Q. So now going back to you said Rob told the others to
6 stop, he stopped, but Jonathan Murphy continued. Can you
7 describe what activity continued?

8 A. Like I said, he would come on the side of the house,
9 and if he felt that he wanted to sell, that's what he
10 would do, you know.

11 Q. Okay. And how long did this go on for?

12 A. Not too often because he wasn't a regular person
13 that was in that neighborhood, but when he did come over
14 and he decided what he was going to do, that's what he
15 did.

16 Q. And did you ever speak with Rob again about stopping
17 that activity?

18 A. Pretty much, yes.

19 Q. Okay. So can you describe what happened next after
20 Jonathan continued with this activity?

21 A. Well, one day I came home from work and basically
22 when I pulled up into my garage the youngest girl at the
23 time that was, she was approximately about eight, nine,
24 somewhere up in there, she came and told me that Rob
25 and --

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1 **MR. FEINBERG:** Objection, hearsay.

2 **THE COURT:** Ms. Finocchiaro.

3 **MS. FINOCCHIARO:** I'm not offering it for the
4 truth of what she told him but what he did afterwards and
5 his reaction to what she said as to why he proceeded.

6 **MR. FEINBERG:** The witness can say she told
7 me something and as a result of that this is what I did
8 rather than, you know, what allegedly was said, which is
9 hearsay.

10 **THE COURT:** All right. Well, I think at this
11 point we're going to break for the day in any event, it's
12 a little after 1:00, and we'll resume tomorrow at the same
13 time. Tomorrow is Friday so we are actually going to be
14 concluding by 12:30 tomorrow rather than 1:00.

15 **THE CLERK:** Please rise.

16 (Jury out at 1:02 p.m.)

17 **THE COURT:** All right. I'll give you the
18 chance to think about that last question and answer and
19 give me argument tomorrow, determine if there are any
20 hearsay objections. I gather that the objection was
21 hearsay, but I don't know that. Mr. Feinberg really
22 didn't specify. Talk among yourselves.

23 **MS. FINOCCHIARO:** Yes, we will, Your Honor.
24 We will resolve it before tomorrow.

25 **THE COURT:** We'll be here at 8:30 so if we

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1 need to we'll address the issue before we get started.

2 **MS. FINOCCHIARO:** Yes, Your Honor.

3 **THE COURT:** Okay. Thanks.

4 (Recess from 1:03 p.m. to 1:20 p.m.)

5 **MS. FINOCCHIARO:** I believe we need
6 Mr. Bailey back because defense counsel would like him
7 present.

8 **THE COURT:** Okay. Did defense counsel hear
9 the remark?

10 **MR. DALY:** No.

11 **MR. SPIELFOGEL:** No.

12 **MR. DALY:** We are not witnesses to this.

13 (Discussion held off the record.)

14 **THE COURT:** So do you want to tell me what
15 happened?

16 **MR. SPIELFOGEL:** Your Honor, we just feel
17 that if the government is going to do that Mr. Bailey
18 should be here to hear any part of this accusation.

19 **THE COURT:** Mr. Jones has left for the day?

20 **MS. FINOCCHIARO:** Yes, he has.

21 **THE COURT:** Okay.

22 **MR. SPIELFOGEL:** No, we don't need to hear
23 the Mr. Jones part. What the government is saying
24 occurred, I think Mr. Bailey needs to hear that, and then
25 if we decide we need Mr. Jones at some point, which --

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1 **THE COURT:** Okay, all right.

2 **MR. SPIELFOGEL:** -- we can deal with that.

3 **THE COURT:** They are bringing him up.

4 (Recess from 1:22 p.m. to 1:29 p.m.)

5 **THE COURT:** All right. Ms. Finocchiaro.

6 **MS. FINOCCHIARO:** Yes. Your Honor, it's been
7 brought to the government's attention that there was just
8 an exchange within the last several minutes between our
9 witness, Mr. Jones, and the defendant, Mr. Bailey.
10 Special Agent Ruiz is the one who brought it to my
11 attention so if it would be okay if he could tell the
12 Court what it was that he understands to have happened.

13 **THE COURT:** Okay.

14 **MS. FINOCCHIARO:** Does he need to go up
15 there?

16 **THE COURT:** No, right here is fine.

17 **SPECIAL AGENT VICENTE RUIZ:** As I understand
18 it, Judge Steeh, as court was adjourning, I went up to the
19 witness box to escort Mr. Jones back out this way, and as
20 I went up there, the CSO nearest to Mr. Jones informed me
21 that there was a threat passed along from Mr. Bailey to
22 Mr. Jones.

23 I asked Mr. Jones what in fact was said, and he
24 informed me that what was said was something to the
25 effect of "I'm going to get mines" or "you're going to get

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1 yours," something to that effect. And then upon asking
2 the CSO, he said that Mr. Jones said, "Fuck you, Bailey"
3 or "Fuck you, bitch" or something to that effect, and
4 that's when I escorted him back out behind the court.

5 **THE COURT:** Okay.

6 **MS. FINOCCHIARO:** At this time, Your Honor, I
7 just would ask, given that Mr. Jones is still on the
8 stand, that there be no -- that it be reiterated that
9 there's no communications between the defendant and our
10 witnesses, threatening or nonthreatening. If he wants to
11 talk to the witness, he can talk through his attorneys,
12 but we're concerned about our witnesses being intimidated
13 by things that are said or however it is that they are
14 interacting with the witness.

15 **MR. SPIELFOGEL:** Okay. Maybe Mr. Daly
16 understands this better than I do, but are we saying that
17 he was sitting here and conveyed something to the person
18 up there through somebody else? I didn't understand that.

19 **SPECIAL AGENT VICENTE RUIZ:** It's unclear to
20 me because I didn't actually observe it or witness it.
21 I'm only going by what I was told by the CSO and what
22 Mr. Jones said.

23 **MS. FINOCCHIARO:** Sir, did you witness it?

24 **COURT SECURITY OFFICER B. JOHNSON:** The only
25 thing I witnessed was what Jones said. I didn't hear

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1 anything that he said down that way.

2 **MS. FINOCCHIARO:** Okay. Could you tell the
3 Court how far they were apart from each other?

4 **COURT SECURITY OFFICER B. JOHNSON:** He was
5 standing in the witness stand, and Bailey was right over
6 there.

7 **MR. SPIELFOGEL:** So that would be
8 approximately what --

9 **COURT SECURITY OFFICER B. JOHNSON:** 10 feet.

10 **MR. SPIELFOGEL:** -- 15 feet, 20 feet.

11 So that's what makes no sense to me at all, Judge.
12 I mean, you've got three people -- three people? You've
13 got one, two, three, four people in between him and him,
14 and he conveyed something from here over to there? I
15 didn't hear anything, and I was right next to him.

16 **THE COURT:** As I understand it, it was
17 several minutes after the court apparently broke and then
18 Agent Ruiz approached the witness box.

19 **SPECIAL AGENT VICENTE RUIZ:** That's correct.
20 I believe it was at the time that the jury was exiting the
21 room.

22 **THE COURT:** Yeah, and I don't know, we don't
23 know where you were or Mr. Daly was.

24 **MR. SPIELFOGEL:** But he would not have been
25 going in that direction.

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1 **MS. FINOCCHIARO:** It also could be the case
2 though that it happened earlier when he was walking past
3 all of the defendants. We don't know when it happened,
4 and unfortunately we don't have that information.

5 **DEFENDANT BAILEY:** Excuse me, Your Honor.

6 **THE COURT:** We have Mr. Jones, who would be
7 able to provide the details of any communication.
8 Apparently I'm not being asked to exclude him or to take
9 other punitive action at this point. Is that --

10 **MS. FINOCCHIARO:** Just one moment,
11 Your Honor.

12 At this time, Your Honor, we're not going to ask
13 for anything. We want to speak to Mr. Jones. I learned
14 about this after he left so at this point we are not
15 asking for any specific action be taken, but we'll dig
16 further into it.

17 **THE COURT:** I can address it in the morning
18 if there is -- first of all, if you have it clarified what
19 was said, if anything, to Mr. Jones, and I can hear from
20 the defendant as well and make a decision if you're asking
21 me to exclude him from the trial. Consider that he's been
22 warned previously that he would be removed for disruptive
23 behavior. Threatening a witness would at a minimum
24 represent -- would at a minimum be disruptive, and witness
25 intimidation is certainly not anything we are going to

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1 tolerate here.

2 So we'll wait to see what Mr. Jones has to say
3 tomorrow morning, and I can proceed further and hear from
4 the defendant's point of view as well and decide whether
5 or not other action is called for.

6 **MS. FINOCCHIARO:** Thank you, Your Honor.

7 **THE COURT:** But we'll do that in the morning.
8 So if everybody can be here by 8:30, we'll -- hopefully
9 Mr. Jones will be here as well.

10 **MS. FINOCCHIARO:** Yes. I'm going to try to
11 speak to him tonight, so ...

12 **THE COURT:** All right.

13 **MS. FINOCCHIARO:** Thank you.

14 **DEFENDANT BAILEY:** Excuse me, Your Honor.
15 May I please just say something just real brief?

16 **THE COURT:** Yes.

17 **DEFENDANT BAILEY:** I understand the
18 corruption of your courtroom. I did not threaten nobody.
19 I never threatened this dude. The Marshal right here was
20 standing right there as she always do. If I would have
21 threatened him, she would have heard me threaten him, and
22 I never threatened him. That's all I want to say.

23 **THE COURT:** Okay. Maybe we don't have to do
24 anything. We'll see.

25 (Proceedings adjourned at 1:35 p.m.)

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C E R T I F I C A T I O N

We, Ronald DiBartolomeo and Sheri Ward, official court reporters for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

s/ Ronald DiBartolomeo_____
Ronald DiBartolomeo
Official Court Reporter

6/21/2018
Date

s/ Sheri K. Ward_____
Sheri K. Ward
Official Court Reporter

6/21/2018
Date

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